आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL DIVISION BENCH, 'B' CHANDIGARH

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 728 & 729/CHD/2024

निर्धारण वर्ष / Assessment Year: 2011-12

Shri Jatinder Nath, House No.134, Sunil Park, Opp. MBD Mall, Ludhiana.	Vs	The ITO, Ward 6(4), Rishi Nagar, Ludhiana.
		स्थायी लेखा सं./PAN NO: ADNPN1619C
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : None (Adjournment Application)
Revenue by : Shri Vivek Vardhan, Addl. CIT DR

Date of Hearing : 13.01.2025
Date of Pronouncement : 15.01.2025

O R D E R

PER RAJ PAL YADAV, VP

The present two appeals are directed at the instance of the assessee against the separate orders of ld. CIT(A) dated 30.04.2024 passed in assessment year 2011-12.

2. ITA No. 728/CHD/2024 emanates from an assessment order dated 25.12.2018 vide which income of the assessee has been assessed under Section 147 read with Section 144 of the Income Tax Act whereas ITA No.729/CHD/2024

emanates from a penalty order dated 20.06.2019 passed under Section 271(1)(c) of the Act. The ld. First Appellate Authority has decided quantum appeal as well as penalty appeal by way of separate orders on 30.04.2024. First we take quantum appeal.

3. The ld. Counsel for the assessee has applied for an adjournment however, after perusal of the record carefully, we are not inclined to grant any adjournment hence, with the assistance of ld. DR, we have heard the appeal and proceed to decide it on merit.

4. The assessee has taken ten grounds of appeal. However, perusal of all these grounds would reveal that grievance of the assessee revolves around two folds. The first fold of grievance is that ld. CIT(A) has erred in not condoning the delay of 383 days and dismissing the appeal being time barred. In the second fold, the grievance of the assessee is that ld. CIT(A) has erred in confirming the addition of Rs.9,94,578/- which was added by the AO with the aid of Section 68 of the Income Tax Act.

5. A perusal of the record would reveal that according to the AO, status of filing of return is not ascertainable but certain FDs, time deposits etc. were noticed from the accounts of a Co-operative Society. Therefore, he issued a notice under Section 148 of the Income Tax Act and invited the explanation of the assessee as to why additions be not made. Notice was not served upon the assessee or if served, then also no representative was there. The AO has passed an ex-parte assessment order on the basis of his best judgement. When assessee came to know about this assessment order, he filed appeal before the ld. CIT(A) and prayed for condonation of delay in filing the appeal. The case of the assessee before the CIT(A) was that no notice was served upon him nor any assessment order was informed to him. He did not know the fact that any assessment proceedings were pending against him, therefore, he could not file the appeal well in time. However, ld. First Appellate Authority did not condone the delay and affirmed the addition in an ex-parte order.

5. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of

memorandum of cross- objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld. Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji& Others, 1987 AIR 1353:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is

condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

6. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finislitium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part*

> *of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss".*

7. In the light of the above, if we peruse the record carefully, then we find that factum of the service of notice has not been duly demonstrated by the Revenue. The possibility of non service of the notice could not be ruled out. Even otherwise, ld. First Appellate Authority ought to have condone the delay because the assessment order was also an ex-parte. Had an opportunity of representation was given, probably assessee would have explain the deposits in the accounts. Therefore, we condone the delay in filing the appeal and entertain the appeal on merit. Ideally, wherever an irregularity crept in, that irregularity be set aside and proceedings should be instituted at that very level. In other words, we ought to have set aside the issues to the file of CIT(A) for adjudication on merit. But we find that since

assessment order was ex-parte order and ld. CIT(A) would call for a remand report from the AO, where a separate proceeding would be instituted and all these proceedings may be of faceless in nature, it will again create some hardship to the assessee. Therefore, we deem it appropriate to set aside the assessment order also and restore these issues to the file of AO for adjudication. The AO will first issue notice and serve upon the assessee and then take up the proceeding. Alternatively, we direct the assessee to file an application within two months from the receipt of this order to the AO for taking up proceedings so that assessee can furnish his latest address to the AO. With the above observations, this appeal is allowed for statistical purposes.

8. As far as the penalty appeal is concerned, we find that there is a delay of 206 days in filing the appeal. By following our finding in the quantum appeal, we condone this delay and entertain the appeal on merit. Since we have remitted the quantum addition, it is required to be decided again. At this stage,it is not ascertainable whether AO would make the addition again or not but the foundation to visit the assessee

with the penalty is no more survived and therefore, we set aside the penalty proceedings also to the AO. It will be in the discretion of the AO to visit the assessee with the penalty or not. In case he found that no addition is to be made to the total income of the assessee, then no penalty would be imposable upon the assessee. Therefore, this appeal is also allowed for statistical purposes and the issue is being restored to the file of AO.

9. In the result, both appeals are allowed for statistical purposes.

Order pronounced on 15.01.2025.

Sd/-	Sd/-
(KRINWANT SAHAY)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

"Poonam"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar