

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA Nos. 733 to 736/Chd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Golden Wines, 2673 Phase-I, Basant Avenue, Dugri, Ludhiana Punjab-141008	बनाम	The ITO Ward-6(1) Ludhiana
स्थायी लेखा सं. / PAN NO: AAPFG8414P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से / Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख / Date of Hearing : 02/01/2025
उद्घोषणा की तारीख / Date of Pronouncement : 20/01/2025

आदेश / Order

PER BENCH :

These are four appeals filed by the assessee against the respective orders of the Ld. CIT(A)/NFAC, Delhi pertaining to Assessment Year 2017-18.

2. All these cases were heard together and are being disposed of this consolidated order.

3. Briefly the facts of the case are that the assessee filed its return of income on 13/03/2018 declaring total income of Rs. 4,86,850/- thereafter, case of the assessee was selected for scrutiny through CASS under complete scrutiny for the reason of abnormal increase in cash deposit during the Demonetization period

as compared to pre-demonetization period and thereafter, notice under section 143(2) and 142(1) were issued and the assessment was completed under section 144 vide order dt. 23/12/2019 wherein the AO brought to tax a sum of Rs. 49,63,000/- deposited in the bank account maintained by the Assessee with HDFC Bank in absence of necessary explanation explaining the nature and source of the said deposit submitted by the assessee as unexplained money under Section 69B of the Act. Besides that, an addition of Rs. 3,59,260/- was also made on account of license fee, penalty and interest debited in the P&L Account for the reason that assessee has failed to substantiate the same and penalty proceedings were separately initiated.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). The Id. CIT(A) has observed that in spite of the fact that the assessment order as well as demand notice were served on the assessee on 23/12/2019, the assessee has failed to file the appeal within statutory time period and the appeal has only been filed on 19/12/2022 with the delay of 1082 days and defect notice was issued to the assessee. In response, the assessee filed its explanation for the delay in filing the appeal, however not finding the same acceptable, the appeal of the assessee has been dismissed in limine by the Ld. CIT(A) on account of delayed filing of the appeal. Against the order of the Ld. CIT(A), the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that this is a case of partnership firm, which was in existence only for one year i.e. for financial year 2016-17 and the firm had taken contract for country liquor vend for only one financial year. The assessee has filed the return of income on the basis of audited books of accounts and the same have been enclosed in the Paper Book.

5.1 It was submitted that the case for Asstt. Year 2016-17 was picked up for scrutiny and there were certain queries regarding the deposit of cash deposits

and for which, a questionnaire is being enclosed herewith in the paper book at pages 2 & 3. The assessee had filed reply to that as per copy placed at page 4 of Paper Book and, thereafter, the proceedings were closed as per copy of the assessment order at pages 05-06 of PB.

5.2 Further, for the impugned Asstt. Year 2017-18, the questionnaire was issued vide notice u/s 142(1), dated 10.08.2018 (Copy placed at pages 26-30 of PB) and to which, the assessee's counsel replied as per copy of the reply is placed at page 31 in PB and which has been reproduced by the Assessing Officer in the Assessment order at page 2. In fact the Counsel wrongly submitted reply meant for AY 2016-17 during proceedings for AY 2017-18 due to inadvertent mistake.

5.3 It was submitted that thereafter, certain notices, dated 10.11.2019 and 23.11.2019 were sent on the IT portal of the assessee, where the email.id of earlier Accountant namely Sh. Pardeep Singh had been given and he did not check the portal of the assessee and, as such, no further compliance could be made to such notices due to the lapse on the part of the earlier Accountant and, due to which, the Assessing Officer had passed an ex-parte order u/s 144, making an addition of Rs. 49,63,000/- during demonetization period. The said assessment order was again sent on the IT portal of the assessee and no physical delivery of the assessment order was made as from Pg. 32-35 of paperbook for AY 2017-18.

5.4 It was submitted that thereafter, the recovery notice, dated 05/12/2022 was received by one of the erstwhile partners on 09/12/2012 and then he contacted the accountant, who has then immediately downloaded the order as passed by the then Assessing Officer, dated 23/12/2019 and filed the appeal before the Ld.CIT(A) with next few days on 22/12/2022.

5.5 It was submitted that after filing of the appeal, a deficiency letter was issued by the Ld. CIT(A) and which was replied by the assessee as per copy of the letter reproduced by the CIT(A) in his order both on delay of filing the

appeal and on merits. It was submitted that though, the delay was of 1082 days but by excluding the COVID period, the delay is only 255 days. It was submitted that the affidavits of the partner and Accountant had also been filed. It was submitted that the Ld. CIT(A) has failed to appreciate the aforesaid peculiar facts and circumstances of the case and the assessee is not going to benefit by delayed filing of the appeal and the delay so happened in filing the appeal be condoned and in support, reliance was placed on the following decisions:

i). *Jyotsna M. Mehta v. Principal Commissioner of Income Tax (2024 SCC OnLine Bom 2946)*:

"Delay caused by bona fide reasons such as reliance on professional advice can be condoned."

ii). *Shree Jain SwetamberMurtipujakTapagachha Sangh v. CIT (Exemption)*:

"Tax authorities must ensure substantial justice and avoid technical dismissals when dealing with genuine taxpayers."

iii). *Bar Council of India v. Commissioner of Income Tax (Exemption) [2024] 158 Taxmann.com 311 (Delhi)*:

"Delay caused due to genuine and procedural challenges should be condoned if the taxpayer demonstrates bona fide conduct."

iv). *Al Jamia Mohammediyah Education Society v. CIT (Exemption) [2024] 298 Taxman 650 (Bombay)*:

"Section 119(2)(b) must be interpreted liberally to avoid hyper-technical disallowances that contradict the purpose of the Income Tax Act."

vi). *Shree Jain SwetamberMurtipujakTapagachha Sangh v. CIT (Exemption)*:

"Substantial justice must take precedence over technical compliance issues, particularly for charitable trusts."

5.6 Further, our reference was drawn to the written submission filed before the Ld. CIT(A) which are contained at pages 43 to 45 of the assessee's paper book and the contents thereof read as under:

Subject: Reply to the clarification notice issued dated 11.03.2024

With regards to the above captioned notice, it is submitted that we are in receipt of your goodself notice in respect of clarification sought in respect of appeal filed before the Worthy CIT Appeals wherein appeal filed has been found to be deficient on the basis of late filing of appeal before the worthy CIT Appeals and your goodself has sought reasonable justification for late filing of appeal/condonation of delay in filing of appeal.

Our reason for condonation of delay in filing of appeal is as under:

1. It is submitted that the M/s. Golden wines was a partnership concern which was constituted vide partnership deed dated 31.03.2016 with eight partners. The firm was engaged in business of sale purchase of all kind of liquor and the firm was dissolved vide dissolution deed dated 31.03.2017. Thus the business was in operation for one year only due to non-allotment of liquor license in the next financial year by the Excise Department, state government, Punjab. It is relevant to point out here that the Appellant has deposited cash sum of Rs. 49,63,000/- in bank account during the demonetization period 08.11.2016 to 30.12.2016 which was out of sale of liquor during that period. It is also brought to your notice that the regular books of accounts were audited by the chartered accountant and return declaring income of Rs. 4,86,850/- was duly filed on 13.03.2018. Also the Assessing Officer of Ward VI(5) Ludhiana, issued notice u/s 143(2) dated 10.08.2018 and thereafter issued notice U/s 142 (1) dated 11.10.2019 and 23.11.2019 at the email address of his counsel resulting in non-compliance of these notices.

2. Further the case of the Appellant was transferred to another ward VI (3) Ludhiana by order dated 10.12.2019. Thereafter, notice u/s 142(1) was issued dated 12.12.2019 to the Appellant for 16.12.2019 for very short period on the same email ID of the counsel and Assessment was made on 22.12.2019. Since the Appellant firm was dissolved as such Appellant could not attend the proceedings for the lack of proper communication to the partners of the firm. The Assessing Officer proceeded to complete the assessment u/s 144 of IT Act, by making arbitrary addition of Rs. 3,59,260/- being expenses claimed and 49,63,000/- being cash deposited in the Bank and raised the demand of Rs. 53,90,400/- against the Appellant. The assessee got to know about the same assessment order passed after receiving the physical demand notice of dated 05.12.2022 on 09.12.2022 as per the copy of physical demand notice attached herewith as Annexure-1. Further, the assessee has appointed us as counsel (Sudhir K. Sehgal & Associates) and we immediately filed the appeal before worthy CIT(A) dated 22.12.2022. The assessee firm has prevented and sufficient and reasonable cause to not file appeal in time.

3. In view of the above said bona-fide reason, the delay for filing the appeal before the Hon'ble Bench of 1082 days may please be condoned and oblige. Reliance is also being placed on the judgment of Hon'ble ITAT Mumbai Bench of the Tribunal in the case of Triumph International Finance India Limited bearing ITA No. 1870/Mum/2020 for Ay 2017-2018. In the said judgment the finding of the Hon'ble ITAT Mumbai Bench is as under:-

"The year 2019 being the initial year of shift towards digital and electronic mode, the mistake appears to be bona-fide. The assessee has been able to show reasonable cause for the failure to comply with the stator notice u/s 142(1) of the Act."

4. Reliance is also being placed on the judgment of Hon'ble Amritsar Bench, Amritsar of the ITAT in the case of M/s Gurfateh Films and Sippy Grewal Productions (P) Ltd., in which, there was substantial delay and following the judgment of Hon'ble Apex Court In the case of "Esha Bhattacharjee, the delay was condoned.

[2009] 178 Taxman 319 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA Poonam Industries vs. Commissioner of Income-tax

Section 249 of the Income-tax Act, 1961 Commissioner (Appeals) Form of appeal and limitation - Whether though a party is required to explain each day's delay and to show that it was prevented by sufficient cause in filing appeal in time, yet power to condone delay has to be exercised in a pragmatic manner to advance substantial justice Held, yes - Whether where plea of illness of one of partners of assessee-firm was not fake, delay in filing appeal could not be denied to be condoned on ground that other partners could have pursued appeal, inasmuch as every partner may not be aware of all affairs of firm - Held, yes

Your goodself attention is also invited to the judgment of the Puneet Fashions Pvt. Ltd. & Ors; of the Chandigarh Bench of the ITAT bearing ITA No. 1065 to 1067/Ch/2017 for the Assessment Year 2008-09 to 2010-11 dated 31.10.2017, in which there was a delay of 821 days on account of certain financial disturbances in the business and other relevant factors and that delay is condoned by the Hon'ble Chandigarh Bench, Chandigarh. Further, there is another judgment of the Chandigarh Bench of the ITAT in the case of Amit Mehra & others C/o Jagan Nath Ram Sahal in ITA No. 1466/Ch/2018 dated 16.07.2019, where the delay of 634 days, and after considering the above said judgments and other factors, such delay has been condoned.

In view of the above said facts and circumstances of the case and relied upon the above said judgments. The delay in filing of appeal of 1082 days may, please, be condoned and oblige. Copy of affidavit shall be furnished/uploaded shortly."

5.7 Further, our reference was drawn to the Affidavit filed by the Partner of the assessee firm which has been duly filed before the Ld. CIT(A) which is contained at page 46 to 48 of the assessee's paper book and the contents thereof read as under :

"I Balbir Singh S/o Sh. Partap Singh partner in Firm namely M/s Golden Wines, 2673, Phase- 1, Urban Estate Dugri, Ludhiana (East), Basant Avenue, Ludhiana-141013 do hereby solemnly declares as under:-

1. That I was a partner in the partnership firm namely M/s. Golden Wines, Basant Avenue Ludhiana in the FY 2016-17. The aforesaid partnership firm was dissolved mutually with the consent of all the partners on date 21.03.2017.
2. That the assessment was framed u/s 148 of the Income Tax Act, 1961 of the above said partnership Firm for AY 2017-18 and the assessment was framed u/s 144 of the Act with addition of Rs. 53,22,260/- vide assessment order dated. 23.12.2019.
3. That, I was not aware of the above assessment proceedings due to closer of Firm in AY 2017-18 and it came to my know how only in the month Dec, 2022 when demand notice was physically served on 09.12.2022.
4. That the appeal in the above said case was filed with The Worthy Commissioner of Income Tax (Appeals) on 22.12.2022.

5. That there was delay in filing of appeal before The Worthy CIT(Appeals) by 1082 days, due to the fact that the said firm stood dissolved w.e.f. 21/03/2017 and there was no information about the assessment proceedings being carried out in the case of Partnership Firm as none of notice was served upon the assessee physically.

6. That the notices during the assessment proceedings was being served on e-mail ID of previous counsel of the assessee and who didn't intimate us about the notices being served upon his email ID.

7. That the filing of appeal were delayed by us due to the facts that none of the partner was checking the ITBA portal due to the reason that the firm was already dissolved on 21.03.2017 and as such no legal compliance was pending at our end. The assessee got to know about the assessment order being passed only on receipt of physical demand notice dated 09.12.2022.

8. That In view of the above said bona-fide reason, the delay for filing the appeal may please, be condoned in interest of natural justice and oblige."

5.8 Further, our reference was drawn to the Affidavit from the Counsel/ Accountant of the assessee stating that the email id mentioned in the IT portal belongs to him and he failed to intimate the assessee and its partners as to the receipt of communication from the AO which is contained at para 49 to 50 of the assessee's paper book and the contents thereof read as under:

"I, Pardeep Singh S/o Sh. Nirmal Singh R/o H No. 6521/115-C/19, Street Number-3, Jassian Road, Hari Singh Nagar, Ludhiana-141001 do hereby solemnly declares as under:-

1. That, I am working as an accountant for more than last 10 years and I am responsible for all accounting relating works i.e. Books Keeping, ITR Filing, GST Returns etc.

2. That in the FY 2016-17, I was managing the accounts of Partnership firm namely "Golden Wines" engaged in a business of trading of Liquor.

3. That, the credentials of ITBA portal of above said firm were handled by me only and other details includes e-mail updated on profile both primary and secondary also belongs to me "singhcaptain5256@gmail.com" "singhcaptain7003@gmail.com".

4. That, the notice being served on my mails related to firm namely "Golden Wines" was not conveyed by me to any partners of M/s. Golden Wines, due to the fact that I was under the view that since the firm Golden Wines has discontinued there was no requirement to file the reply to the said notices.

5. That the non-appearance of the firm during the course of the assessment proceedings and the delay in filing the appeal is due to my mistake of not intimating the authorized persons of the firm regarding the assessment order passed in its case."

5.9 In light of the above, it was submitted that given that the assessee firm has since been dissolved and one of the partners has come forward to make the necessary compliance to the notices so issued by the Revenue and the fact that the earlier notices as well as the assessment order were not received by the partnership firm and the Accountant who was hired by the partnership firm had duly admitted and acknowledge in his Affidavit that it is his failure in terms of timely communication to the assessee firm and its partners that the delay has happened, it was submitted that the assessee has sufficient cause for the delayed filing of the appeal and in the interest of substantial justice, the assessee be provided one more opportunity to represent its case and the delay be condoned and the matter be remitted back to the file of the Ld. CIT(A).

5.10 It was further submitted that there is a delay in other three appeals as well which have been filed by the assessee against the sustenance of the penalty orders passed under section 270A, 271AAC(1) and 272A(1)(d) of the Act and the delay in these cases has also not been condoned by the Id CIT(A) and the appeals of the assessee has been dismissed in limine. It was submitted that similar fact pattern exist for the delayed filing of these appeals as explained above, that the assessee has sufficient cause for the delayed filing of the appeal and in the interest of substantial justice, the assessee be provided one more opportunity to represent its case and the delay be condoned and all these matters be remitted back to the file of the Ld. CIT(A) to decide the same on merits.

6. Per contra, the Ld. DR submitted that even where the Covid period is excluded, there is a substantial delay in filing all these appeals and it is only on receipt of recovery notice that the assessee has woken up and filed these appeals. It was submitted that there are clearly laches and negligence on part of the assessee and the Id CIT(A) has rightly dismissed these appeals on account

of delayed filing of appeal without sufficient cause. He accordingly supported the order and findings of the Id CIT(A).

7. We have heard the rival contentions and perused the material available on record. There is no dispute that there has been a delay in filing the present appeals before the Id CIT(A). As the Courts have held that though the assessee is required to explain each day's delay and to show that it was prevented by sufficient cause in filing appeal in time, yet power to condone delay has to be exercised in a pragmatic manner to advance substantial justice. The explanation of the assessee therefore becomes relevant to determine whether the same reflects sufficient cause on its part in not presenting the appeal within the prescribed time and whether the requisite circumstances exist to condone the delay. In the instant case, the explanation so advanced on behalf of the assessee has been duly considered as well affidavit of one of the partners of the assessee firm as well as its accountant which has been placed on record has been duly examined. It is no doubt true that the assessee firm got dissolved vide dissolution deed dated 31.03.2017, however, the same cannot be an excuse to shirk from its statutory duties and necessary compliances under the law which required to be complied with and as such, there is no exemption under law that where the firm is dissolved, it is absolved from the necessary filings and compliances relating to the period of its existence, rather its erstwhile partners continues to remain responsible for all its acts and deeds. It is also a matter of record that assessee firm has carried out the necessary tax filings subsequently as well as attended to the assessment proceedings for immediately previous assessment year 2016-17, however, for the impugned assessment year 2017-18, though there are initially compliances, however, subsequently, there is lack of compliance which has resulted in passing of assessment order u/s 144 of the Act. Thereafter, only on receipt of the demand/ recovery notice that the assessee firm has realized that there is huge tax demand and related penalties and it thereafter took the necessary steps in terms of reaching out to its accountant

and thereafter, the appeals were filed. Though the accountant in his affidavit has admitted that there is a failure on his part in terms of timely communication to the assessee firm the receipt of email-communication received on his email-id from the Revenue, at the same time, the assessee need to remain vigilant and has to exercise necessary oversight, as it would be doing for all other business and related legal and regulatory matters, which it has failed to do so in the instant case and there is clearly lack of oversight and supervision which is discernable from material on record. At the same time, we find that due to covid pandemic and nationwide shutdown, all activities were brought to a halt and the assessee couldn't be penalized for the period of said delay and in any case, the Id DR has not objected to the said explanation. We also find that as soon as it received the recovery/demand notice, the assessee has realized its mistake and thereafter, took necessary steps in terms of reaching out to the current Counsel and has filed the appeals and seek an opportunity to be heard on merits. Considering the entirety of facts and circumstances of the case, we find that though there are laches and negligence on part of the assessee, at the same time, we believe that where the assessee has come in appeal before this Tribunal, it deserve an opportunity and cannot be condemned unheard and the tax which is due and lawful can only be recovered and nothing more. As held by the Hon'ble Supreme Court and other Courts from time to time, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred and a pragmatic approach should be followed. Therefore, in exercise of powers conferred under the Act, we hereby condone the delay in filing the present appeal before the Id CIT(A) subject to cost of Rs 10,000/- as accepted by the Id AR on behalf of the assessee during the course of hearing. The same shall be deposited in Prime Minister National Relief Fund and evidence thereof should be brought on record.

8. In light of aforesaid discussions, the delay in filing the appeals before the Id CIT(A) is hereby condoned and all the matters are remitted to the file of the Id CIT(A) for adjudication on merits as per law after providing reasonable opportunity to the assessee.

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

Order pronounced in the open Court on 20/01/2025

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER
AG

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

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