

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-B” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA Nos.1649 and 1850/Bang/2016
Assessment years: 2008-09 and 2009-10

Shri. S. Muralikrishna, 9/18, II Cross, Gandhi Nagar, Ballari-583103. PAN : ACUPM3004A	Vs.	Dy. Commissioner of Income Tax, Circle-1, Ballari.
Appellant		Respondent

Assessee by	:	Dr. B. S. N. Prasad, Advocate
Revenue by	:	Shri. Saravanan B, Addl. CIT

Date of hearing	:	29.11.2016
Date of Pronouncement	:	02.12.2016

ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against separate orders of the CIT(A). The relevant AYs are 2008-09 and 2009-10. Since common issue is involved in these appeals, they were heard and disposed off in this consolidated order.

2. Briefly, the facts of the case are as follows:

The assessee is an individual doing business in retail liquor sales. For AY 2008-09, the return of income was filed on 01.10.2008 declaring total income of Rs.11,67,840/-. The assessment under section 143(3) was completed by order dated 27.12.2010 fixing total income at Rs.40,25,454/-. For AY 2009-10, the assessee had filed the return of income on 30.09.2009 declaring a total income of Rs.17,49,720/-. The assessment for AY 2009-10 was completed by fixing total income at Rs.47,10,975/-.

3. Against the assessment orders completed for AY 2008-09 and 2009-10, assessee preferred appeals to the first appellate authority. The assessee had filed petitions and accompanied by affidavits for condoning the delay in filing the appeals before the CIT(A). The CIT(A) rejected the condonation petition and appeals of the assessee was dismissed *in limini*.

4. Aggrieved by the orders of the CIT(A), the assessee has filed the present appeals before tribunal. The learned counsel for the assessee had submitted that explanation for the cause of delay supported by an affidavit was filed before CIT(A) and CIT(A) has erred in dismissing the appeals of the assessee *in limini* without going into the issue on merits. The learned AR strongly relied on the grounds raised in the appeal memo. The learned DR present was duly heard.

5. I have heard the rival submissions and perused the material on record. For AY 2008-09, the assessment order was received by the assessee on 3.1.2011 and the due date for filing the appeal before the CIT(A) was 2.2.2011. The assessee filed the appeal only on 30.6.2011. Therefore there is a delay of 4 months and 28 days. For AY 2009-10, the assessment order was received by the assessee on 28.12.2011 and the due date for filing the appeal was 27.1.2012. The appeal was filed before the CIT(A) only 3.7.2012 and therefore there is a delay of 5 months and 24 days. The assessee had filed a condonation petition accompanied by the affidavit stating the reasons for the delay in filing the appeal before the first appellate authority. In the affidavit filed for AY 2008-09 for condoning the delay, the assessee had stated that his mother had expired on 22.1.2011 after a short span of illness. The relevant portion of the affidavit filed by the assessee for 2008-09 reads as follows:

"1. I am the Appellant and I am conversant with the facts and circumstances of this case.

2. I submit that the delay in filing the Appeal is attributable to the following factors:

a. My mother was ill and hospitalized around December 15, 2010 in Chennai, Apollo. She took her last breath on January 22, 2011.

b. In such a scenario I was finding it difficult to carry on even my day-to-day activities let alone managing commercial transactions and other aspects of worldly life.

3. Due to the said reason, the appeal could not be filed within the statutory time period of 30 days.

4. It is further submitted and brought to your kind notice that I would have nothing to gain even tangentially/remotely by not filing the appeal on time.

5. It is therefore submitted that, there is no deliberate inaction on my part in filing the appeal beyond the limitation period available. I submit that the aforesaid delay was due to sufficient and reasonable cause and obviously there was no mala fide intention in delaying the filing of appeal.

6. If my prayer is not allowed, the Appellant will be put to immense hardship and would cause irreparable loss & substantial injustice.

7. No injury or hardship would be cause to the other side if my prayer is allowed."

6. The Mumbai High Court in the case of Anand B. Shinde (HUF) v. Income-tax Officer -24(1)(3), Bombay [2014] taxmann.com 212 (Bombay) was considering the following factual situation:

- *The Assessing Officer passed the assessment order on the assessee on 21-12-2009. Against the impugned order, the assessee filed an appeal before the Commissioner (Appeals) belatedly on 15-11-2010. He filed an application for condonation of delay stating that (i) his mother was not keeping good health for last many years and died on 23.12.2008, and (ii) he was only person to look after his mother and after her death was not in proper state of mind for long time resulting in delay in filing the appeal.*
- *The Commissioner (Appeals) rejected the application for condonation of delay and accordingly dismissed the appeal as time barred.*
- *On second appeal, the Tribunal held that the assessee had not given cogent reasons for condonation of delay and he had been negligent. It accordingly upheld the order of the Commissioner (Appeals).*

7. On appeal to the Hon'ble High Court of Mumbai, it was held as follows:

- *It is true that the assessee's mother died on 23-12-2008 and the assessment order was passed on 21-12-2009. Therefore, there was considerable time gap between two events. Similarly the appeal was filed on 15-11-2010. However, each person reacts differently to the shocks which life administers from time to time. There can be no uniform standard of reaction by all persons to the unfortunate evens. [Para 8]*

- *In the peculiar facts and circumstances of the case, the Commissioner (Appeals) as well as Tribunal ought to have taken the liberal view and condoned the delay in filing the appeal. Even if the Commissioner (Appeals) was not satisfied with the ground set out in the appeal memo at the time of filing the appeal, he should have called upon the consultant appearing for the assessee before him to explain the delay, as there was gap of almost one year between the death of the assessee's mother and the date of the assessment order. This does not appear to have been done. In the peculiar facts and the circumstances of the case, interests of justice would be served if delay is condoned and appeal is heard on merits by the Commissioner (Appeals) subject to payment of costs. [Para 9]*
- *Therefore, the orders passed by the appellate authorities were liable to be set aside and matter required to be restored to the file of the Commissioner (Appeals) for decision on merits. [Para 10].*

8. In the instant case, we noticed for AY 2008-09, the assessee has given the reason of demise of his mother for the delay in filing the appeal. For the AY 2009-10, apart from the demise of his mother, the assessee has stated that he is a partner of firms and director of certain companies which had incurred losses on account of closure of mining activities consequent to which the business activity was stopped, and lending banks had pressurized for payment of

instalments, which led the assessee to great mental pressure.

9. The Hon'ble Supreme Court in the case of Collector, Land Acquisition & Other v. Mst. Katuji & Others AIR 1987 SC 1353 had enunciated the following principles to be kept in mind while considering the delay condonation petition:

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

- 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."

10. Following the above principle enunciated by the Hon'ble High Court, I am of the view the assessee in the instant case was having sufficient/reasonable cause for filing appeals before the CIT(A). Therefore, I condone the delay in filing the appeals before the CIT(A) for AYs 2008-09 and 2009-10. Since the delay in filing the appeals before the CIT(A) has been condoned, the issue on merits necessarily has to be adjudicated by the CIT(A). Therefore, the matter is remitting to the CIT(A) to decide the issue on merits. It is ordered accordingly.

11. In the result, the appeals filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 02-12-2016.

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place : Bangalore
Dated : 02/12/2016

/NS/

Copy to :

1. Appellant
2. Respondent
3. CIT(A)-II Bangalore
4. CIT
5. DR, ITAT, Bangalore
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore