

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 944/KOL/ 2015
Assessment Year: 2010-2011**

Shri Purna Chandra Maiti,.....Appellant
Sherpur Telengabarh, Contai,
Purba Medinipur-721 401
[PAN : AEYPM 0604 G]

-Vs.-

Income Tax Officer,.....Respondent
Ward-2, Haldia,
Basudevpur,
P.O. Khanjan Chak, Haldia,
Purba Medinipur-721 602

Appearances by:

Shri Manish Tiwari, FCA, for the assessee
Shri Niloy Baran Som, JCIT, Sr. D.R., for the Department

Nate of concluding the hearing : December 15, 2015

Date of pronouncing the order : January 06, 2016

O R D E R

This appeal is preferred by the assessee against the order of Id. Commissioner of Income Tax (Appeals)-VII, Kolkata dated 21.04.2015 for the assessment year 2010-11, whereby he dismissed the appeal of the assessee filed before him treating the same as barred by limitation after rejecting the application filed by the assessee for condonation of the said delay.

2. The assessee in the present case is an individual, who is engaged in the business as a labour contractor. The return of income for the year under consideration was filed by him on 22.09.2010 declaring total income of Rs.6,80,904/-. In the assessment completed under section 143(3) vide an order dated 31.12.2012, the total income of the assessee was determined by the Assessing Officer at Rs.8,99,793/- after making certain additions. The said additions were disputed by the assessee in the appeal filed before the Id. CIT(Appeals). Since there was a delay of 392

days in filing the said appeal, an application seeking condonation of the said delay was filed by the assessee before the Id. CIT(Appeals). The Id. CIT(Appeals) did not find merit in the said application and rejecting the same, he declined to condone the delay on the part of the assessee in filing the appeal before him and dismissed the same at the threshold as barred by limitation. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

3. I have heard the arguments of both the sides and also perused the relevant material available on record. As pointed out by the Id. Counsel for the assessee, the delay of 392 days in filing his appeal before the Id. CIT(Appeals) was sought to be condoned by the assessee on the following grounds as given in the application:-

“(1) That order u/s. 143(3) of the I.T. Act, 1961 dated 31.12.2012 passed by ITO, Ward-2, Haldia for AY 2010-11, showing additional liabilities reached the undersigned on or about 07.01.2013.

(2) That the relevant order and demand notice were handed over to my local A/R Shri A.K. Roy on 10.01.2013 for advice including remedial action, if any.

(3) That Sri Roy who is a patient of throat cancer was physically unfit to travel to Kolkata immediately for consultation with his senior colleague looking after appeal matter. He ultimately met his senior colleague at Kolkata on 31.03.2013 and left the order u/s 143(3) etc. for preparation of appeal brief.

(4) That Sri S. Bose, the senior colleague and Retd. ACIT met an accident on 02.04.2013 resulting in fracture of right wrist. As such, Shri Bose could not attend his day to day chamber work till the end of August, 2013.

(5) That the preparation of appeal brief went out of the memory of Sri S. Bose because of prolonged suffering from April to August, 2013.

(6) That in course of hearing for assessment proceeding of 2011-12 with consequential follow up of payment of outstanding tax Sri A.K. Roy contacted Sri S. Bose on 26.02.2014 in this respect.

(7) That the appeal memo including grounds of appeal was accordingly drafted by Sri S. Bose which was finalized on 03.03.2014. The payment of appeal fee was thereafter arranged”.

4. A perusal of the impugned order of the Id. CIT(Appeals) shows that the application filed by the assessee for condonation of delay giving the above reasons, however, was not found acceptable by him on the ground that the same was without any basis and factually incorrect. He held that the assessee was not having any genuine cause, which prevented him to file the appeal in time. As rightly contended by the Id. Counsel for the assessee before me, there is no reason whatsoever given by the Id. CIT(Appeals) in his impugned order to come to the conclusion that the application of the assessee for condonation of delay was without any basis and was factually incorrect. On the contrary, the conclusion drawn by the Id. CIT(Appeals) in his impugned order that there was no genuine cause which prevented the assessee to file the appeal in time is without any basis as the reasons given by the assessee in his application filed before the Id. CIT(Appeals), in my opinion, constitute sufficient cause, which prevented the assessee from filing the appeal before the Id. CIT(Appeals) in time. I, therefore, set aside the impugned order of the Id. CIT(Appeals) on this issue and direct him to dispose of the appeal of the assessee filed before him on merit after condoning the delay. Needless to observe that the Id. CIT(Appeals) shall give proper and sufficient opportunity of being heard to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on January 06, 2016.

Sd/-

**(P.M. Jagtap)
Accountant Member**

Kolkata, the 6th day of January, 2016

- Copies to :
- (1) **Shri Purna Chandra Maiti,
Sherpur Telengabarh, Contai,
Purba Medinipur-721 401**
 - (2) **Income Tax Officer,
Ward-2, Haldia,
Basudevpur,
P.O. Khanjan Chak, Haldia,
Purba Medinipur-721 602**
 - (3) *Commissioner of Income-tax (Appeals)-VII, Kolkata*
 - (4) *Commissioner of Income Tax, Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.