

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI SANJAY GARG (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.1180 /Mum/2015
(Assessment Year: 2008-09)

Rina S Mehta 32, Madhuli, 3 rd Floor Dr A.B. Road, Worli Mumbai-18	Vs	ACIT, CC-23 (Now ACIT, CC 4(1), Mumbai
PAN : ABNPM8222C		
(Appellant)		(Respondent)

Appellant by	Shri Dharmesh Shah
Respondent by	Dr. P Daniel

Date of hearing : 17-10-2016
Date of pronouncement : 17 -10-2016

ORDER

Per ASHWANI TANEJA, AM:

This appeal has been filed against the order of Commissioner of Income-tax (Appeals)-52, Mumbai [hereinafter called CIT(A)] dated 31-12-2014 passed against the assessment order u/s 144 dated 09-12-2010 for A.Y. 2008-09 on the following grounds:

“Grounds of appeal against the order dated 31.12.2014 u/s. 250 of the Act passed by the Ld. Commissioner of Income-tax (Appeals) -52, Mumbai.

Following grounds of appeal are without prejudice to each other:

1. The Ld. Commissioner of Income-Tax (Appeals) has

erred in law and in facts in dismissing the appeal in Limine.

2. The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in not condoning the delay of about 10 months in filing the appeal before him.

3. The Ld. Commissioner of Income-tax (Appeals) has erred in Law and in facts in confirming levy of penalty of Rs.2,23,17,740/- u/s 271(1)(c) of the Act.”

2. During the course of hearing it was submitted at the outset by the Ld. Counsel that in this case, Ld. CIT(A) has not adjudicated the appeal on merits for the reason that appeal was filed late and he refused to grant condonation of delay in absence of proper explanation for the delay. It was further submitted that in the case of assessee, similar situation had arisen in earlier years wherein CIT(A) had refused to grant condonation of delay and the matter reached upto the Tribunal and the Tribunal sent the matter back to the Ld.CIT(A) after condoning the delay. Copies of following orders of the Tribunal were placed before us :-

1. In the case of the assessee order dated 13-07-2006
2. Order in the case of Reena & Sudhir S Mehta dated 23-09-16
3. Order in the case of the assessee dated 29-04-2016

Our attention was also drawn upon the application for condonation of delay and other supporting evidence explaining reasons for delay in filing of appeal before the Ld. CIT(A).

3. Per contra, the Ld. DR opposed the contentions of the Ld. Counsel and relied upon the order of the Ld. CIT(A). But he did not make any distinction between the facts of earlier years and the year before us.

4. We have gone through the order of the Ld.CIT(A), application for condonation of delay along with requisite evidence filed before the Ld.CIT(A) vide letter dated 09-12-2014 as well as aforesaid orders of the

Tribunal passed in assessee's own case. It is noted by us that this issue has already been adjudicated by the Tribunal in assessee's own case for earlier assessment years. The Tribunal vide order dated 13-07-2006 disposing the appeal for assessment years 2004-05, 2005-06, 2006-07 and 2007-08 observed as under :-

"5. We have gone through the orders of the lower authorities, submissions made by both the sides before us as well as petition for condonation of delay and detailed reasoning submitted by the Ld. Counsel along with the affidavit to explain the delay in filing of the appeals before Ld.CIT(A) and also lack of proper representation before the Ld.CIT(A). For the sake of ready reference, the reasons explained in detail in writing by the assessee before us are reproduced hereunder:

"Reasons for delay in filing appeal and non-appearance at the time of hearing before Ld. CIT(A):

1. I submit that I am a family member of Late Shri Harshad S. Mehta. I am also a notified entity under the provisions of Special Courts (Trail of Offences Relating to Transactions in Securities) Act, 1992 w.e.f. 04.01.2007. I state that my assets were attached since 08.06.1992 since they were jointly held with other members of my family who got notified on 08.06.1992. In view of my notification under the Special Courts Act, all my assets including bank accounts are under control of the Custodian appointed for this purpose who manages the same under orders of Hon'ble Special Court. I submit that I have no other source of income except the income earned on attached assets.

2. For A.Y. 2004-05 to 2006-07, the assessment order was passed u/s 144 of the Act on 01.12.2008. Appeals against the said order were preferred before Ld. CIT(A) on 02.02.2009 with a delay of 17 days. Similarly, for A.Y. 2007-08, the assessment order was passed u/s 144 of the Act on 16.12.2009. Appeal against the said order was filed before Ld. CIT(A) on 18.02.2010 with a delay of 34 days.

3. The Ld. CIT(A) dismissed my appeals in limine for A.Y. 2004-05 to 2007-08 vide order dated 04.03.2013 on the following grounds:

a. That the appeals were belatedly filed and no application for condonation of delay was filed.

b. That no one appeared on behalf of the applicant at the time of hearing.

4. As regards the delay in filing of appeals, it is submitted that the delay was primarily for the reason that the appeal fees were not released by the custodian and hence the appeal could not be filed in time. It is reiterated that I am a notified entity and all my assets along with the bank accounts are managed by the custodian appointed under the Special Court Act. The applicant has to request the custodian to release fees for filing appeal. Accordingly, I had addressed a letter to the custodian on 31.12.2008 for release of appeal fees. The copy of the said letter is enclosed at Annexure W. Since the appeal fees were not released by the custodian inspite of the visits and personal follow ups, the filing of appeal got delayed.

5. Moreover, during the said period, particularly for A.Y. 2007-08, I was also facing several other difficulties including non-availability of the tax consultants for preparing the appeals and filing the same. It is submitted that due to the notification and the attachment of my assets, I was unable to make the payments to the consultants and counsel for the purpose of making tax compliances.

Further, number of matters before the Hon'ble Special Court and Honble Supreme Court had to be attended by me as a result of which I could not attend to filing of the impugned appeal before the Ld. CIT (A).

6. Your Honours would observe that I had taken all the initiatives to address letter to the custodian for the release of the appeal fee for filing the appeal and eventually as the fees were not released, the same was paid by cash obtained from others and appeal was filed before Ld. CIT(A). Thus, so far as the appeals were concerned, I was very much diligent and anxious about pursuing the appeals. The delay was caused for reasons which were beyond the control of the applicant and there was no deliberate delay or any mala fide intention on the part of the applicant.

7. As regards non appearance before the Ld. CIT (A), I reiterate that I did not have the benefit of the professional assistance regularly, more particularly due to non availability of complete records with me as well as my inability to seek the presence of my consultants/ counsel. Further, during the said year numbers of proceedings were being carried out before the Hon'ble special court and Hon'ble Supreme Court. As a result of the same I had to frequently attend to these

matters, particularly because they were pertaining to the sale of our residential house. Further, I also did not have sufficient staff to look after these proceedings before the Ld. CIT (A).

8. Thus, the applicant could not make compliances due to several reasons, which are summarised as under:

a) No release of appeal filing fees by the custodian.

b) Attachment of assets including bank accounts.

c) Non availability of counsels / Advocates to represent

d) Other special court matters pending before Hon'ble Special Court at such point of time.

e) No staff to get help for details gathering and attending to income tax proceedings as their services were dispensed with.

9. It is submitted that my above difficulties prevailing for a very long period has been judicially noticed and considered by the Hon'ble Tribunal in several matters. In this regard, reference may be drawn to the order of Hon'ble Mumbai Tribunal vide in the case of the Ashwin S. Mehta v. DCIT & Ors. [ITA No. 7310/M/2003] dated 31 .03.2006, wherein all the difficulties mentioned above are considered by the Hon'ble Tribunal and delay in filling the appeals was condoned.

10. Your Honours may also note that the Hon'ble Supreme Court in the case of Harshad Shantilal Mehta v. Custodian & Ors [231 ITR 871] has also taken judicial notice of peculiar conditions that would government a notified person by observing that, "Then, on account of his property being attached, he may not be in a position to deposit the tax assessed or file appeals or further proceedings under the relevant tax law which he could have otherwise done. "

11. The applicant also relies on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji & Ors. (167 ITR 471) and N. Balakrishnan v. M. Krishnamoorthy (AIR 1998 S.C. 3222) wherein the Hon'ble Court has held that a liberal view shall be taken while deciding condonation of delay.

12. Further, in various cases of the family members and other concerns, the Hon'ble Tribunal has taken a consistent view that delay shall be condoned in case of notified entities. Details of some of the orders is mentioned as under:

<i>Name of the Case</i>	<i>Delay</i>	<i>condoned</i> <i>(No of Days)</i>
<i>Rasita Mehta v. DOT [ITA No. 36831M/2011]</i>	<i>dated 28.11.2014</i>	<i>11 days</i>
<i>2 Rina Mehta v. DOT Et Ors [ITA No. 3047/M/2006]</i>	<i>dated Upto 11.12.2007 [31 cases]</i>	<i>1145 days</i>
<i>Ashwin S. Mehta v. DOT [ITA No. 7310/Mum/2003]</i>	<i>Upto dated 31.03.2006] [39_cases]</i>	<i>827days</i>
<i>Growmore Research Assets Mgt Ltd. v. ACIT</i>	<i>Upto [3576/Mum/2007] dated 17.12.07 [16 cases]</i>	<i>573 days</i>

13. In view of the aforesaid factual and legal position, it is humbly prayed that the delay occurred in fitting of the appeal before Ld. CIT(A) and subsequent non attendance was due to reasons beyond the control of the applicant.”

6. It is further noted that the aforesaid reasons have been supported with an affidavit of the assessee in which all these facts have been deposed on oath. Nothing wrong has been pointed out by the Ld. Special Counsel of revenue in the said affidavit and reasons explained by the Ld. Counsel of the assessee. It is noted that there was delay of 17 days in the appeals for A.Ys 2004-05 to 2006-07 and delay of 34 days in the appeal for A.Y. 2007-08. A perusal of the reasons explained by the Ld. Counsel shows that there was sufficient cause which had led to delay in filing of the appeals before the Ld. CIT(A) and also caused improper representation before the Ld.CIT(A). In our opinion, in the given facts and circumstances of the case doors of justice should not be closed to the assessee without proper trial. The final tax liability of an assessee should not be determined without providing adequate opportunity of hearing.

It is further noted that Tribunal in other cases of the family has condoned the delay, even for larger number of days. Further, Shri Dhaval Shah, the Ld. Counsel of the assessee gave an undertaking before the bench during the course of hearing that if another opportunity is given, then proper representation shall be made before the Ld. CIT(A). Thus, taking into account the facts and circumstances of the case, we condone the delay of 17

days and 34 days in filing of appeals before Ld.CIT(A) and send these appeals back to the file of the Ld.CIT(A). The assessee shall suo motto appear before the Ld. CIT(A) on 17-10-2016. The assessee shall also submit requisite written submissions and paper book and shall not take adjournment without a valid reason. The assessee shall also extend necessary cooperation to the Ld. CIT(A) in expeditious disposal of these appeals. Ld. CIT(A) shall admit these appeals and dispose of the same on merits. The Ld. CIT(A) shall give adequate opportunity of hearing to the assessee."

5. We have gone through the observations of the Tribunal and facts of the year before us. It is noted that the facts and circumstances and the reasons involved in the year before us are identical. Therefore, respectfully following the orders of the Tribunal, we send the appeal before us to the file of Ld. CIT(A) for adjudication on merits. Ld. CIT(A) as well as the assessee shall follow our directions as have been given in our orders for earlier years. The assessee shall suo motto appear before the Ld. CIT(A) on 28-11-2016. Other directions shall remain same.

6. As a result, this appeal may be treated as allowed, for statistical purpose.

Order was pronounced in the open court at the conclusion of the hearing.

Sd/- (SANJAY GARG)	Sd/- (ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 17th October, 2016

Pk/-

Copy to :

1. The appellant
 2. The respondent
 3. The CIT(A)
 4. The CIT
 5. The Ld. Departmental Representative for the Revenue, D-Bench
- (True copy) By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES