

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
ITA No.5769/M/2016 (AY 2011-2012)

Mrs. Nilofer Mustafa Nalawala (Proprietress of Liberty Graphics), R.No. 2104, Summer Park, 4, Seth Motisha Lane Cross, Byculla, Mumbai-400027.	बनाम/ Vs.	Income Tax Officer- 21(3)(4), Mumbai.
स्थायी लेखा सं./PAN : ABMPN8288Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Nitesh Joshi
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 09.02.2017

घोषणा की तारीख /Date of Pronouncement : 03.03.2017

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 26.9.2016 is against the order of the CIT (A)38, Mumbai dated 28.6.2016 for the assessment year 2011-12. In this appeal, assessee raised five grounds in toto.

2. In the grounds, assessee raised the issues relating to (i) the CIT (A)'s decision in non-condoning the delay in filing the appeal before the FAA; (ii) CIT (A)'s decision in confirming the AO's decision of estimating the purchases from alleged hawala dealers applying the rate of 25% of the purchases made from 8 parties totalling to Rs.27,50,505/-. On this account, AO made addition of Rs. 6,87,626/- which is the subject matter of grounds no.3 and 4.

3. In connection with the issue relating to condonation of delay of 227 days, assessee submitted that she is tied up with her children's education and serious issues of her dependents from in-laws side. But the said reasons were rejected by the CIT (A) as they do not constitute sufficient reason / reasonable cause for condoning the delay. FAA further held that it is a case of negligence and the explanation given by the assessee is not acceptable. On this issue, before me, Ld

Counsel for the assessee demonstrated that on the basis of the affidavit of the assessee placed at page 5 of the paper book, the Assessing Officer has no contrary evidence to conclude that the reasons given in the said para 4 of the affidavit are not bonafide. Considering significance and for the sake of completeness of this order, the said para 4 of the affidavit filed by the assessee is extracted as under:-

"4. I say that no appeal could be filed earlier against the order of the AO before your goodself on account of the following:

- a. Preoccupation with my own business;*
- b. I was pre-occupied with my family's health issues and child's education.*
 - (i) I have to travel for my sons admission for the M.Tech course and was travelling during May 25-27, 2014 and had gone to Vellore between July 6-9, 2014 for admission at the VIT (Vellore Institute of Technology.*
 - (ii) My father in law was also suffering from severe pneumonia and had to be admitted to hospital in his hometown, Dohad, during the period from July 29 to August 5, 2014.*
 - (iii) My father has been unwell and suspicious of malignant tumour in right palm since February 2014 till date and was also operated at Lilavati Hospital, Mumbai. He had been taken to Prince Aly Khan Hospital, Mumbai couple of times.*
Thus, apart from the business I had to also take care of my father in law as well as my father and thus I was busy and mentally worried and disturbed about my family. Over and above I was also tied up with my son's education and career.
- c. Further, I say that I was under impression that as the transportation / delivery challans as well as the quantity usage statement was provided no penalty would be levied and hence to put an end to the litigation and busy peace of mind I did not prefer an appeal.*
- d. However, that was not the case and the AO levied penalty and the order was received on September 1, 2014 both me and my Chartered Accountant were busy with the audit and tax filing season in the month of September.*
- e. Additionally, I was also engaged during the first 10 days of the holy month of Muharram with prayers and going to the mosque from October 24, 2014 to November 2, 2014.*

Hence, your honour would appreciate that I was genuinely pre-occupied with my personal problems as well as being under bonafide belief that there would not be any penalty on account of various documentary proof submitted at the time of hearing."

4. From the above, it is a fact that the Assessing Officer has not demonstrated that the above submissions of the assessee are not bonafide. As such, right of appeal is a precious one which is granted to the assessee by the statute and it is expected that every assessee shall exercise the said right but for the reasonable cause.

5. On hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the above extracted contents of the affidavit filed by the assessee explaining the reasons for not filing the appeal before the FAA within the prescribed time limit, I am of the opinion, the decision of the CIT (A) on this issue is required to be reversed with a direction to the CIT (A) to admit the appeal and adjudicate the issues on merits. Accordingly I order. While adjudicating the quantum appeal on merits, I direct the CIT (A) to apply the correct law with regard to the percentage of addition that is required to be confirmed in the light of the judgments in force ie judgment of the Hon'ble jurisdictional High Court judgment in the case of CIT vs. Nikunj Eximp Enterprises Pvt Ltd (216 Taxman.com 171) (Bom.) and judgment of the Hon'ble Gujarat High Court in the case of **CIT vs. Simit P. Seth** (356 ITR 451) (Guj.). Assessee shall be granted reasonable opportunity of being heard as per the set principles of natural justice. Accordingly, issues raised in this appeal are allowed for statistical purposes.

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

Order pronounced in the open court on 03rd March, 2017.

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 03.03.2017

व.नि.स./ OKK, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai