आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member

आ.अपी.सं /**ITA No.850/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2011-12)

Shri Rama Krishna Ramisetty Ranga Reddy PAN:AHLPR1765R	Vs.	Income Tax Officer Ward-1 Nalgonda
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.A. Sai Prasad, CA	
राजस्व द्वारा/Revenue by::	Shri Aravindakshan, DR	
सुनवाई की तारीख/Date of hearing:	04/11/2024	
घोषणा की तारीख/Pronouncement:	04/11/2024	

आदेश/ORDER

This appeal filed by the assessee is directed against the order dated 16/08/2024 of the learned CIT (A)-/ADDL/ JCIT(A)-1, Nagpur, relating to A.Y.2011-12.

2. The brief facts of the case are that the appellant, an individual was an employee with the State Bank of Hyderabad (now State Bank of India), at Colaba, Mumbai. The State Bank of Hyderabad (herein after referred (as the employer) had issued to the Appellant, a Form 16 dated 02.05.2011, wherein total income was

indicated at Rs. 9,86,373/-. However, the tax was deducted on actual income which was Rs. 5,02,558/-. Accordingly, the Appellant filed the return of income on 29.06.2011, admitting the total income to be Rs. 9,86,370/- totally relying on the Form 16 issued by the employer. Thereafter, the Central Processing Centre (herein after referred as CPC) issued an intimation u/s 143(1)(a) raising a demand of Rs 1,49,380/-. The demand of Rs.1,49,380/- could be because the tax TDS was done on actual income of Rs.5,02,558/-. Whereas the income indicated in the Form-16, income tax return and intimation u/s 143(1)(a) is Rs.9,86,373/-. Subsequently, intimation u/s 245 dated 12 October, 2013, was issued to the Appellant adjusting the refund of AY 2013-14 with demand of impugned AY. Upon receipt of intimation u/s 245 on 12-10-2013 the Assessee became aware that income offered in the return was Rs.9,86,373/- as against actual income of Rs.5,02,558/- which was substantially lower than the amount mentioned in Form 16. Thereafter, the Appellant requested the Employer to issue updated/Revised Form-16 showing correct particulars. Subsequently, revised Form-16 was issued by the Employer on 20.11.2013, determining income to be Rs 5,02,558/-. However, the time limit to file revised return had expired by 31.03.2013 and accordingly, revised return could not be filed. Further, in response to the above Intimation for adjusting refund, the appellant filed letter with the Jurisdictional Assessing Officer and since there was no adjustment of refunds due against any

demand, he was under the presumption that the matter has been resolved.

3. Thereafter, the appellant has filed appeal on 17/06/2022 against the order passed u/s 143(1) of the I.T. Act, 1961 passed on 24/01/2013 by the Assessing Officer/CPC Bengaluru and such appeal has been filed after a delay of more than 10 years. The assessee has explained the reasons for not filing the appeal in time and according to the assessee, he has filed incorrect ITR based on incorrect Form-16 issued by his employer State Bank of Hyderabad. The Assessing Officer processed the return of income filed by the assessee and determined the tax liability of Rs.1,49,380/-. However, he could not notice the order passed by the Assessing Officer u/s 143(1) of the Act, until such time, the Assessing Officer issued intimation u/s 245 of the Act, dated 12/10/2023 after adjusting refund due for the subsequent A.Y against the tax liability for the A.Y 2011-12. Thereafter, the assessee has approached his employer for issue of correct Form 16 and the employer has issued revised Form 16 on 26/11/2023 with nil tax liability. The assessee could not file belated return u/s 139(4) of the Act, because the due date for filing the return was already expired. The assessee has approached the Assessing Officer for rectifying the mistake, but the Assessing Officer has not responded to the letters filed by the assessee. The assessee was pursuing the matter with the Assessing Officer whenever the Assessing Officer issued notice for

recovery of tax. However, could not file appeal on the bonafide belief that his grievance would be resolved by the Assessing Officer. However, only after he came to know that the Assessing Officer has failed to resolve his grievance, the appellant had filed appeal on 17/06/22 before the learned CIT (A). Although, there is a delay of more than 10 years in filing of the appeal, but the said delay is neither intentional nor wanton of any undue benefit. Therefore, he requested the learned CIT (A) to condone the delay.

4. The learned CIT (A) after considering the relevant submissions and also by following certain judicial precedents, rejected the appeal filed by the assessee unadmitted by holding that the reasons given by the assessee for not filing the appeal within due date does not come under reasonable cause and thus, rejected the explanation of the assessee and dismissed the appeal in limini. The relevant findings of the learned CIT (A) are as under:

4.1 Condonation of delay:

The ROI for A.Y. 2011-12 was processed u/s 143(1) on 24.01.2013 by ITO, Ward-1, Nalgonda and raised the demand of Rs. 1,49,380/- which was later adjusted with refund of A.Y. 2013-14 as per the intimation order of A.Y. 2013-14. Thus, he has to file an appeal against the said order u/s. 143(1) on or before 23.02.2013. However, assessee has filed appeal on 17.06.2022, with delay of approximately 10 years. In connection with the above, assessee filed submission as under:

"The Petitioner "Rama Krishna Ramishetty bearing PAN: AHLPR1765R, prefers an appeal before your Honors with a delay of 3,392 days, which was due to be filed on 23/02/2013.

The Petitioner humbly prays that he received incorrect Form 16 from his Employer and inadvertently relying on the same filed return of income.

Subsequently, on receipt on intimation u/s 245 the Petitioner became aware of the outstanding demand raised via intimation u/s 143(1).

Thereafter, corrected Form 16 was obtained from employer and letter was filed with the Jurisdictional Assessing Officer and upon non-adjustment of demand thereafter he was under the presumption that the matter has been resolved.

However, upon further adjustment of the demand in the recent past, the Petitioner wan made aware that matter has not been resolved. Finally, the Petitioner approached Chartered Accountant, who advised him to file an appeal against the intimation u/s 143(1)(a). Hence, the appeal is now filed with a delay of 3,392, days.

The Petitioner humbly prays the Hon'ble Commissioner of Income Tax (Appeals) to condone the delay of 3,392 days, which is purely due to circumstances beyond his control and knowledge."

4.2Form of appeal and limitation: Let`s consider the legal provisions of the Income Tax Act, 1961.

i) "As per section 249(2) of the Act the appeal shall be presented within thirty days from the date of service of order/notice of demand relating to the assessment."

ii) "As per section 249(3) of the Act the appeal may be admitted by the appellate authority if he is satisfied that the appellant had sufficient cause for not presenting it within that period."

Definition of `Sufficient Cause`:

In case of Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee &Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v. Veena Bharti AIR 2011 SC 1150 and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629, it was held by the Supreme Court that-

"Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

The expression 'sufficient cause' is not defined in the Act, but it means a cause which is beyond the control of an assessee. For invoking the aid of the section 249, any cause which prevents a person approaching the CIT(A), within time is considered as sufficient cause. In doing so, it is the test of reasonable man in normal circumstances which has to be applied. The test whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. In other words, whether it is *bona fide* cause? What may be sufficient cause in one case may be otherwise in another. What is of essence is whether it was an act of prudent of reasonable man. Subsequent decision of a court cannot constitute sufficient cause. [*Prashant Projects Ltd.* v. *Dy. CIT* [2013] 37 taxmann.com 137/145 ITD 202 (Mum. - Trib.)]

4.3 In the decision of the **Hon`ble High Court of Bombay in the case of Perfect Circle India Ltd. v. ACIT [2020] 120 taxman.com 262 (Bombay)[28.01.2020]** vide paras 8 & 11 has held that delay in filing the appeal could not be condoned when no sufficient cause was shown by assessee.

" Thus examining the present case on the touchstone of above, we find that in this case there has been inordinate delay of about 10 years in filing the appeal. Firstly, the assessee had submitted that it was an inadvertent error. In another affidavit assessee had tried to submit that appeal papers were prepared but were not filed without any reason by the Chartered Accountant. The submission is not supported for its veracity or reasoning. Furthermore, there is no rationale in allowing a person to file an appeal after ten years simply because ten years ago also he had thought of filing the appeal. There can be many reasons why a person having thought of filing an appeal may decide not to pursue the matter. Hence, the contents of the second submission cannot be treated but as an afterthought."

'It is a settled position that an application for condonation of delay has to be liberally construed, as held by the Apex Court in various cases (see Collector, Land Acquisition v. Mst. Katiji [1987] 167 ITR 471 (SC). However, this liberal construction of the sufficient cause while condoning delay has to be counter balanced by ensuring that the law of limitation which provides for definite consequence on the rights of the parties does not become ineffective. The rule of limitation is provided for general welfare of the

society so as to put a period beyond which a party cannot agitate an issue in litigation. The rationale for the same is that once a litigation is decided, the dispute must repose. This is particularly so, if the party aggrieved by the order does not agitate the issue before the appellate forum within the time provided. The opposite party can then proceed on the basis that the dispute is settled and arrange its affairs on that basis. Thus, if the aggrieved party has not moved the appellate forum within the prescribed time, resulting in other securing an accrued rights, then the party moving an application for condonation of delay, must endeavour to explain the delay and show his bonafide in not having moved within the time prescribed (i.e. not being diligent). The law assist the vigilant and not the indolent as stated in the LatinMaxim "Vigilantsbusennondormientibus jura suveniunt.". The reasons for explaining the delay has to be plausible and reasonable so that the Court can exercise its discretion. Moreover, although a party is not be required to explain the reasons for not filing an appeal within the prescribed time the party must explain the delay post period of limitation i.e. from the expiry of the period of limitation.'

4.4 In another decision **Hon`bleHigh Court of Madras in the case of Royal Stitches (P.) Ltd. v. Deputy Commissioner of Income-tax [2023] 156 taxmann.com 361 (Madras) [21-09-2023]** has held that-

"Whether where a case has been presented in Court beyond limitation, assessee has to explain to Court as to what was 'sufficient cause' which means an adequate and enough reason which prevented him to approach Court within limitation - Held, yes - Whether discretion to condone delay has to be exercised judiciously based on facts and circumstances of each case and expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to party."

4.5 Supreme Court in the case of CIT vs. Hongo India Ltd. (2009) 315 ITR 449 (SC) has held that-

"the delay in filing an appeal cannot be condoned merely because the assessee or the department failed to act promptly. The court emphasized that statutory time limits must be respected."

4.6 Reliance can also be placed on the decisions given by various appellate authorities in the following cases, denying the condonation of delay on various grounds in the absence of bonafide, sufficient, reasonable cause:

i) CIT vs. Ram Mohan Kabra (2002) 257 ITR 773 (AP)

ii) Collector, Land Acquisition vs. Mst. Katiji&Ors. (1987) 167 ITR 471 (SC)

iii) CIT vs. Rajesh Kumar Sharma (2014) 363 ITR 247 (P&H)

iv) CIT vs. P.K. Venkatesan (2000) 245 ITR 244 (Mad.)

v) CIT vs. Keshav Fruit Mart (2006) 203 CTR 83 (All)

vi) CIT vs. Ram Mohan Mishra (2005) 276 ITR 351 (All)

4.7 Period of delay is a factor to be considered while considering a delay condonation application; but more importantly it is the explanation for the delay which is relevant.

The reasons as shown by the assessee cannot fall within the parameters of sufficient cause so as to confer a benefit of condonation to the assessee. The facts, circumstances and period of delay in cases referred by assessee in his explanation/submission are different and not applicable to assessee in the absence of vigilant attitude and sufficient cause.

4.8 In the instant case, The ROI for A.Y. 2011-12 was processed u/s 143(1) on 24.01.2013 by ITO, Ward-1, Nalgonda and raised the demand of Rs. 1,49,380/- which was later adjusted with refund of A.Y. 2013-14 as per the intimation order of A.Y. 2013-14, the order of which was passed and communicated to the assessee on 12.10.2013. Assessee did not communicate the grievance or grounds of contention in the past decade and after a period of almost 10 years. Now assessee is contemplating to appeal with respect to matter of refund which was not contested for decades. As per submission of assessee and considering the totality of the case, there is no sufficient, valid, bonafide reason or circumstances to appeal after a lapse of decade (approx. 10 years). There is no sufficient cause which prevented assessee from filing the appeal decades ago.

4.9 Further in Circular No. 9/2015 dated 09.06.2015, Subject: Condonation of delay in filing refund claim and claim of carry forward of losses under Section119(2)(b) of the Income-tax Act, CBDT in para 3 stated that-

"3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible."

Thus, it is very clear that assessee has no ground for claiming refund after lapse of approximately 10 years.

5. In view of the above, I am not inclined to interfere with the order of the AO.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee referring to the dates and events including the order passed u/s 143(1) of the Act, and subsequent intimation u/s 245 of the Act, submitted that the assessee was sincerely following the issue with the Assessing Officer for rectifying the mistake and therefore, did not file appeal on bonafide belief that his grievance would be resolved by the

Assessing Officer. Further, the Assessing Officer has fastened tax liability on the assessee on the income which is not at all accrued to the assessee which is evident from the Revised Form 16 issued by the employer and as per Revised Form 16, there is no tax liability as per employer itself. Since the assessee was under bonafide belief that there is no need to file appeal against the order passed by the Assessing Officer, the delay in filing of the appeal should have been condoned by the learned CIT (A). Therefore, he submitted that a direction may be given to the learned CIT (A) to condone the delay in filing of the appeal and decide the issue on merit.

6. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that sufficient cause as provided under the Act, means the cause which is beyond the control of the assessee. In the present case, the assessee is showing negligence on the part in not filing the appeal even through the Assessing Officer has passed order u/s 143(1) of the Act, and raised the demand. Although, there is no tax demand as per revised Form 16 issued by the employer but that alone is not sufficient for condoning huge delay of 10 years. Therefore, the delay in filing of the appeal should not be condoned and the order of the learned CIT (A) should be upheld.

7. I have heard both the parties, perused the material available on record and gone through the orders of the authorities

below. There is no dispute with regard to the fact that there is a delay of more than 10 years in filing of appeal before the learned CIT (A). In fact, the Assessing Officer passed the assessment order u/s 143(1) on 24/01/2013 and in ordinary course, the appellant should have filed appeal on 23.02.2013. However, the appeal was filed on 17/06/2022 with a delay of nearly a decade. Going by the period of delay and reasons given by the assessee, in my considered view, it is not fit cause for condonation of delay. However, if we go by the demand raised by the Assessing Officer and subsequent revised Form 16 issued by the employer, in my considered view, the tax liability is fastened on the assessee purely on the mistake committed by the employer, State Bank of Hyderabad. Admittedly, the appellant is an employee of SBH, a public sector bank. In case of salaried employee, the tax is deducted at source on total income of the appellant. In the present case, there is no dispute as per revised Form 16 issued on 26/11/2013, the net tax payable/refundable to the assessee was at Rs. Nil. If we go by substance over Form, the cause of substance needs to be looked into rather than form, because as per Article 265 of the Constitution of India, no tax can be collected unless an authority of law. In the present case, tax liability has been fastened on the assessee without an authority of law, because the Assessing Officer raised demand on the income which is not at all accrued or received by the assessee. Since it is a well settled principle of law that unless authority of law, no tax can be collected, in my considered view, if the appeal filed by the

assessee is rejected on technical ground of not filing appeal on or before the dud date, then it is as good as the taxes has been collected without an authority of law contrary to Article 265 of the Constitution of India. Therefore, in my considered view, going by the facts of the present case, as a special case, the delay in filing of appeal before the learned CIT (A) needs to be condoned. Thus, I condone the delay in filing of the appeal before the learned CIT (A) and set aside the order of the learned CIT (A) to the file of the learned CIT (A) to admit the appeal filed by the assessee and decide the issue on merits after providing reasonable opportunity of being heard to the assessee. I further made it clear that, this order cannot be taken as a precedent or authority for any other cases in so far as condonation of delay in filing of appeal before the first appellate authority or before the Tribunal.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 4th November, 2024.

Sd/-

(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Hyderabad, dated 4th November, 2024.
Vinodan/sps

Copy to:

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3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order