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आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR

श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos. 237 & 238/RPR/2023

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

Suresh Kumar Gupta
Prop. M/s. Mittal Roadways,
A-10, G.E Road, Tatibandh
Raipur-492 001 (C.G.)
PAN : ADCPG8248B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prafulla Pendse, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 11.09.2023
घोषणा की तारीख / Date of Pronouncement : 13.09.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 25.10.2022, which in turn arises from the orders passed by the AO under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 16.03.2016 & 25.08.2016 for assessment years 2013-14 & 2014-15. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.237/RPR/2023 for A.Y.2013-14, and the order therein passed shall mutatis mutandis apply for disposing the other appeal filed by the assessee in ITA No.238/RPR/2023 for A.Y.2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

> "1. That the order of the Ld. CIT(A) is bad in Law as well as on facts.
>
> 2. That the order is bad in law as well as on facts and the Ld. CIT(A) erred in confirming the action of Ld. AO in making disallowances of Rs.4,80,325/- under section 40(a)(ia) of the income tax act, 1961.
>
> 3. The learned CIT(A) erred in sustaining adhoc disallowance of Rs.37,290/- made by Ld. AO under the head petrol expenses and vehicle expenses.

4. The learned CIT(A) erred in sustaining ad-hoc disallowance of Rs.10,000/- made by Ld. AO under the head telephone expenses.

5. The learned CIT(A) erred in sustaining ad-hoc disallowance of Rs.5,514/- made by Ld. AO under the head depreciation for alleged personal use.

6. The above grounds are independent and without prejudice to one and another.

7. The appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete or withdraw any of the ground or ground and to adduce fresh evidence at the time of hearing of the appeal."

3. Succinctly stated, the assessee had e-filed his return of income for the A.Y.2013-14 on 30.09.2013 declaring an income of Rs.8,66,360/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

4. Assessment was, thereafter, framed by the A.O vide his order passed u/s. 143(3) of the Act dated 16.03.2016, wherein after making multi-facet additions/disallowances, income of the assessee was determined at Rs.14,47,140/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee had failed to put up an appearance in the course of hearing of the appeal before the CIT(Appeals), therefore, the latter had upheld the view taken by the A.O and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

7. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities as well as material available on record.

8. Shri Prafulla Pendse, the Ld. Authorized Representative (for short 'AR') for the assessee at the very outset submitted that there is delay of 191 days involved in filing of the captioned appeals. Elaborating on the reasons leading to the aforesaid delay in filing of the appeal, it was averred by the Ld. AR that the same had occasioned for the reason that the requisite Form No.26A could not be obtained by the assessee from the payee companies viz. (i) Magma Fincorp Ltd.; and (ii) Religare Finvest Ltd. My attention was drawn by the Ld. AR to the application seeking condonation of delay a/w. affidavit dated 07.09.2023 filed in support thereof. Referring to the aforesaid facts, it was submitted by the Ld. AR that as the delay involved in filing of the captioned appeals had crept in because of bona-fide reasons, therefore, the same in all fairness may be condoned.

9. Per contra, the Ld. Departmental Representative (for short 'DR') vehemently objected to the seeking of the condonation of delay involved in filing of the captioned appeals by the assessee appellant. It was averred by

the Ld. DR that as the delay involved in filing of the captioned appeal of 191 days was clearly an inordinate delay with no justifiable reasons, therefore, the appeals filed by the assessee was liable to be dismissed on the said count itself.

10. I have given a thoughtful consideration and am unable to subscribe to the request of the Ld. AR for condoning the delay involved in filing of the present appeals. I, say so, for the reason that not only the delay involved in filing of the captioned appeals is inordinate but also no justifiable reasons had been advanced by the assessee to explain the same. On a careful perusal of the application filed by the assessee seeking condonation of delay read a/w. affidavit dated 07.09.2023, I find that the only reason given by the assessee to explain the aforesaid delay was that the requisite certificates in Form No.26A could not be obtained from the respective payees, viz. (i) Magma Fincorp Ltd.; and (ii) Religare Finvest Ltd. For the sake of completeness, the reasons stated by the assessee in the affidavit (supra) are culled out as under:

> "1. That the assessment order under section 143(3) for AY 2014-2015 was completed by AO on 25.08.2016 by ITO Ward 2(1), Raipur. That the AO made aggregate additions of Rs.7,97,566/- comprising of adhoc and other disallowances of Rs.52,091/- and also disallowance under section 40(a)(ia) of Rs.7,45,475/- on account of non-deduction of tax at source.
>
> 2. The appellant filed an appeal before CIT(A) on 01.10.2016 which was disposed off by him by sustaining the entire additions /

disallowances made by Ld. AO in his assessment order. The appellant could not attend the appellate proceedings before Ld. CIT(A), as appellant was not aware that proceedings for the said assessment year were ongoing and moreover, the requisite certificates in Form No.26A were not available till then. Thus the order of Ld. CIT(A) was framed ex-parte.

3. That during the assessment proceedings as well as appellate proceedings the appellant could not file Form No.26A before these authorities, as the same were not available with the appellant by that time. However, certificate in Form No.26A from Magma Fincorp Ltd. and Religare Finvest Ltd. (ANNEXURE 01 & 02) were available with the appellant but the same was not filed before Ld. CIT(A) as the appellant was awaiting for certificate to be received from India Bulls Housing Finance Ltd. so that they could have been simultaneously submitted, more so because the major disallowance i.e. 74% pertained to India Bulls Housing Finance Ltd.

4. During October, 2016 the appellant had received a document (not in form no.26A) from India Bulls housing Finance Ltd. Stating the fact that it had considered the interest income on loan given to the appellant in its taxable income and taxes thereon were duly paid by the payee company, but the same was not in the format prescribed by the Income Tax Act, 1961 i.e. in Form No.26A. That a copy of said document is enclosed herewith as ANNEXURE-03. After heavy persuasion, India Bulls Housing Finance Ltd. was finally convinced and lastly provided the certificate in requisite format i.e. Form No.26A duly attested by a chartered accountant vide certificate dated 13.04.2023 which was then received by us on 10.06.2023. That copy of Form No.26A along with postal envelope is enclosed herewith as ANNEXURE-04.

5. That there has been inordinate delay of 191 days in filing of the appeal which was then due by 24.12.2022. In the instant case the certificate in Form No.26A was a crucial document necessary for adjudication of issue in dispute before any of the appellate forum which was not available till then. Out of three companies, two companies had already provided us certificate in Form No.26A sometime in October, 2016 itself. That the third certificate from India Bulls Housing Finance Ltd. was ultimately received on 10.06.2023 because the major disallowance i.e. 74% pertained to India Bulls Housing Finance Ltd. However, the appellant is now filing this appeal before the Hon'ble ITAT, Raipur even though with abnormal delay but with a sincere request that the delay in filing the appeal may kindly be condoned in the interest of natural justice for bonafide reasons stated above. By condoning the delay, the Hon'ble ITAT would definitely confer substantial justice on the deponent as the appeal would then be disposed off on merits, with absolutely no loss

> to the revenue. That a separate application for condonation of delay is also being submitted on record."

I am unable to persuade myself to subscribe to the reasons given by the assessee, on the basis of which, the aforesaid inordinate delay of 191 days is sought to be condoned. Reasons given by the assessee for seeking condonation of the delay involved in the appeals, i.e. failure on his part to collect the requisite certificates in Form No.26A from the respective payees does not inspire any confidence. The assessee could have filed the appeals with the Tribunal well within the stipulated time period and ought not to have kept it in abeyance till obtaining of the certificates in Form 26A. On the basis of the aforesaid facts, it can safely be gathered that the assessee had adopted a lackadaisical approach and callous conduct while preferring the appeals before the Tribunal.

11. Considering the totality of the facts involved in the present appeals, I am of the considered view that as inordinate delay is involved in filing of the same, for which the assessee had failed to come forth with any justifiable reason, therefore, as stated by the Ld. DR and, rightly so, the same does not merit to be condoned. The assessee has not given any genuine reason for the delay in filing of the captioned appeals either in his application seeking condonation of delay and the affidavits filed before me or in the course of hearing of the appeals. All that the assessee had tried to canvass before me

was that the delay in filing of the present appeal had occasioned as the requisite certificates in Form No.26A could not be obtained from the respective payees viz. (i) Magma Fincorp Ltd.; and (ii) Religare Finvest Ltd. I find no substance in the claim of the assessee that the delay involved in filing of the present appeals was due to bonafide reasons, and the same does not smack of any lackadaisical conduct on his part. In the totality of the facts leading to the delay in filing of the present appeals r.w the conduct of the assessee appellant before the CIT(Appeals), I would mince no words in observing that the request of the assessee for condoning the delay involved in filing of the appeal does not merit acceptance. In fact, if I condone the inordinate delay involved in the present cases where the assessee had adopted a lackadaisical approach and had not even participated in the proceedings before the CIT(Appeals), then, it would send a wrong message and would lay down a wrong precedent for the times to come. I am of a strong conviction that as the assessee had on account of his callous conduct delayed the filing of the present appeals by a substantial period of 191 days, therefore, the applications filed by him seeking condonation of the delay therein involved does not merit acceptance and are liable to be rejected at the threshold.

12. The Co-ordinate bench of the Tribunal in the case of **M/s. Phoenix Mills Ltd. Vs. Asstt. CIT in ITA No.6240/MUM/2007** for A.Y.1999-2000, dated 23.03.2020, had held that where an application for condonation of delay has been moved bonafide, then, the Court would normally condone the delay, but where the delay has not been explained at all and in fact there is an unexplained and inordinate delay coupled with negligence or sheer carelessness, then, the discretion of the court in such cases would normally tilt against the applicant. Reverting to the facts of the present case, I have already examined the reasons that had led to the inordinate delay, which has not been explained by the assessee to have occasioned due to bonafide reasons. As observed by me hereinabove, as the assessee had remained negligent regarding the process of law even before the first appellate authority and had filed the appeals before me after 191 days, therefore, there appears to be no reason to adopt a liberal view and condone the inordinate delay therein involved. Also, I may observe at this juncture that the law of limitation has to be construed strictly as it has an effect of vesting with one and taking away the right from the other party. The delay in filing of the appeals cannot be condoned in a mechanical or a routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

13. I may herein observe that in the case of **State of West Bengal Vs. Administrator, Howrah 1972 AIR SC 749**, the **Hon'ble Apex Court** had held that the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice, particularly when there is no motive behind the delay. The expression "sufficient cause" will always have relevancy to reasonableness. The action which can be condoned by the court should fall within the realm of normal human conduct or normal conduct of a litigant. However, as observed by me hereinabove, as the assessee appellant in the present case is habitually acting in defiance of law, where he had not only delayed in filing of the present appeals but also had adopted a lackadaisical approach and not participated in the course of the proceedings before the CIT(Appeals), therefore, there can be no reason to allow his application and condone the substantial delay of 191 days involved in preferring of the captioned appeals.

14. Also, I may herein draw support from a Third Member decision of a Co-ordinate Bench of the Tribunal, in the case of **Jt. CIT Vs. Tractors and Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai),** wherein a fine distinction was drawn between normal delay and inordinate delay. It was held as under:

> "A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of

> prejudice to the other side will be a relevant factor so the case calls for a more cautious approach, but in the latter case no such consideration may arise and such a case deserves a liberal approach."

In the present cases, the delay of 191 days cannot be simply condoned on the basis of the unsubstantiated claim of the assessee. In fact, the conduct of the assessee before the lower appellate authority clearly evidences his disregard for the process of law, which, I find, he had carried forward before me by preferring the appeal beyond a period of 191 days after the lapse of the stipulated time period.

15. Also, as observed by the **Hon'ble Supreme Court** in the case of **Ramlal, Motilal and Chotelal Vs. Rewa Coalfields Ltd. AIR (1962) 361 (SC)** that seeker of justice must come with clean hands, therefore, now when in the present appeals the assessee appellant had failed to come forth with any good and sufficient reason that would justify condonation of the substantial delay involved in preferring of the captioned appeals, therefore, I decline to condone the delay of 191 days and, thus, without adverting to the merits of the case dismiss appeal of the assessee as barred by limitation.

16. In the result, the appeal of the assessee in ITA No.237/RPR/2023 for A.Y.2013-14 is dismissed in terms of my aforesaid observations.

ITA No.238/RPR/2023
A.Y.2014-15

17. As the facts and issues involved in the captioned appeal remains the same as were there before me in the assessee's appeal in ITA No.237/RPR/2023 for assessment year 2013-14, therefore, the order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeal i.e., ITA No.238/RPR/2023 for assessment year 2014-15. In this case also, I decline to condone the delay of 191 days and, thus, without adverting to the merits of the case dismiss the appeal of the assessee as barred by limitation on similar terms as were recorded by me while disposing of the appeal in ITA No.237/RPR/2023.

18. In the result, appeal of the assessee in ITA No.238/RPR/2023 for A.Y.2014-15 is dismissed in terms of the aforesaid observations.

19. In the combined result, both the appeals of the assessee are dismissed in terms of the aforesaid observations.

Order pronounced in open court on 13th day of September, 2023.

Sd/-
(**रवीश सूद /RAVISH SOOD**)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 13th September, 2023.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.