

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7807/Del./2018
Assessment Year 2014-2015

Shri Rizwan, Punhana, Mewat, Haryana-122508 PAN ANXPR9424P C/o. Shri Rakesh Kataria, Advocate, 304, 2 nd Floor, Deep Plaza, Opposite District Court, Gurgaon. Haryana – 122 001.	vs.	The Income Tax Officer, Ward-3(5), 6 th Floor, HSI IDC Building, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon, Haryana.
(Appellant)		(Respondent)

For Assessee :	Shri Rajeev Mago, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	29.04.2019
Date of Pronouncement :	01.05.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 17.09.2018, for the A.Y. 2014-2015.

2. Briefly the facts of the case are that return declaring income of Rs.3,73,618/- has been filed. The assessee deals in dairy products. The A.O. initially issued

statutory notices under section 143(2) and Section 142(1) of the I.T. Act, 1961, but, none attended to by the assessee and the notices came back with the remarks "*Refused to take*". The A.O. thereafter issued letter to the assessee as to why income should not be estimated because of the non-cooperation from the side of the assessee. The assessee attended the proceedings with his Counsel at initial date, but, did not furnish any reply. The assessee did not produce books of account and other information and documents sought by the A.O. The A.O. accordingly computed the income of assessee by estimating the net profit @ 3%. The income was computed at Rs.36,84,481/- and by reducing the income declared in a sum of Rs.3,73,618/- made the addition of Rs.33,10,863/-. The A.O. passed the assessment order dated 07.12.2016. The assessee, however, filed the appeal before Ld. CIT(A) on 22.02.2018. The Ld. CIT(A), therefore, noted that appeal is time barred.

2.1. The assessee filed an application before the Ld. CIT(A) for condonation of delay in which it was stated as under :

“On 09/12/2016, I received the order of Id. Assessing Officer, in my case for assessment year 2014-15. Being aggrieved by the said order, I requested my Tax Consultant Mr. Vineet Shukla, Advocate to prefer an appeal to the Hon 'ble Commissioner of Income Tax (Appeal), Gurgaon. They undertook to do the needful soon after he return from village because of his mother is hospitalized. Later on his mother has deceased on 26/01/2017 and it lead to further delay in appeal. Due to close attachment with mother Mr. Vineet Shukla come in shock. Mr. Vineet comes back to his office on 15/03/2017. Further, Mr. Vineet becomes patient of lever and heart diseases because of which he not able to file the appeal. Therefore, filing of appeal further delayed from 16/03/2017 to 31/01/2018. From 01/02/2018 Mr. Vineet fully resume his work and start preparing the appeal documents. From 01/02/2018 to 21/02/2018 Mr. Vineet prepare the appeal and filing the appeal on 22/02/2018.

My affidavit detailing the aforesaid facts and these may kindly be placed before the Hon'ble CIT(A), Gurgaon for condonation of the 441 days delay in submissions of the appeal.”

2.2. The Ld. CIT(A) considering the explanation of assessee found that there is a delay of 441 days in filing the appeal and there is no reasonable cause explained for the delay in filing the appeal. The Ld. CIT(A), accordingly, dismissed the appeal of assessee holding it to be barred by time.

3. Learned Counsel for the Assessee reiterated the submissions made before the Ld. CIT(A) and submitted that Ld. CIT(A) should have condoned the delay in the matter.

4. On the other hand, Ld. D.R. relied upon the impugned order of the Ld. CIT(A) and submitted that assessee never cooperated before A.O. and has no case on merit. Further, assessee failed to explain any reasonable cause for failure to file the appeal within the period of limitation.

5. I have considered the rival submissions. It is an admitted fact that appeal was time barred before Ld. CIT(A). The assessee shall have to prove before Ld. CIT(A) that there exists a reasonable cause for failure to file appeal within the period of limitation. Reasonable cause would mean a cause which is beyond the control of assessee. Reasonable cause means which prevents a reasonable man of ordinary prudence acting under normal circumstances without negligence or inaction or want of bonafide. In the present case, the explanation of assessee for delay in filing the appeal is reproduced above. The assessee contended that after death of mother of his Counsel, his Counsel came back to his Office on 15.03.2017 and since then no appeal have been filed before Ld. CIT(A) till 22.02.2018. During this period of about one year, the Counsel for Assessee did not do anything in the matter. Only general explanation have been given that he was patient of liver and heart ailment which is also not proved to the satisfaction of the Ld. CIT(A). These facts, therefore, clearly show that assessee and his Counsel were wholly negligent and did not take any steps in

the matter in filing of the appeal before Ld. CIT(A) within the period of limitation. This fact is also clear from the findings of the A.O. that assessee did not cooperate before A.O. and did not produce anything in support of the return filed in the matter. The assessee refused to accept the statutory notices and did not produce books of account, other documents to the satisfaction of the A.O. Therefore, A.O. in the absence of any cooperation from the side of the assessee estimated the income of the assessee. These facts clearly supports the fact that assessee never wanted to file appeal before Ld. CIT(A) and it is later on when assessee would have been advised by somebody, he has preferred the appeal which was beyond limitation. Thus, the assessee acted negligently and never acted bonafidely in the matter. It would be appropriate to refer to some of the judicial pronouncements on the issue of delay in filing the appeals.

5.1. In the case of Hind Development Corpn. v. ITO [1979] 118 ITR 873, the Calcutta High Court held that a Tribunal can condone the delay if there was sufficient cause for the delay in the submission of the appeal. In the case

of Vedabai alias Vijayanatabai Baburao Patil v. Shantaram Baburao Patil [2002] 253 ITR 798 (SC), where it was held that while exercising discretion under section 5 of the Limitation Act, 1963, to condone delay for sufficient cause in not filing the appeal within the period prescribed, Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. The Court observed that whereas in the former consideration of prejudice to the other side will be a relevant factor and calls for a more cautious approach. In the latter case no such consideration may arise and such a case deserves a liberal approach. Now in the present case, the delay is not of a few days but of 441 days. Besides, there is absolutely no valid explanation/reason for the delay. In the case of CIT v. Ram Mohan Kabra [2002] 257 ITR 773, the Hon'ble Punjab & Haryana High Court has observed that where the Legislature spells out a period of limitation and provides for power to condone the delay as well, such delay can only be condoned only for sufficient and good reasons supported by

cogent and proper evidence. It is a settled principle of law that provisions relating to the specified period of limitation must be applied with their rigor and effective consequences. In this case, delay for filing the appeal late for only a few days was not condoned. In the case of Asstt. CIT vs. Taggas Industries Development Ltd. [2002] 80 ITD 21 (Cal.), Tribunal, Calcutta Bench, Calcutta, did not condone the delay for filing the appeal late by 13 days because the delay was not due to sufficient cause.

5.2. Thus, relying on the above judgments, I hold that assessee failed to explain that delay in filing the appeals was due to sufficient cause. Considering the above discussion, I am of the view that Ld. CIT(A) correctly dismissed the appeal of assessee by holding it to be time barred. No interference is required in the mater. Appeal of assessee is dismissed.

6. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st May, 2019
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.