

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2984/M/2022
Assessment Year: 2006-07**

Ms. Rakhi Anant Sawant, 40-01, B- Wing, Behind Ohsiwara Bus depot, Imperial Heights, Goregaon Link Road, Goregaon(W), Mumbai-400 062 PAN: AUMPS5377C	Vs.	Income Tax Officer 11(1)(3), Mumbai- 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri V.K.Tulsiyan, A.R.
Revenue by : Smt Mahita Nair, Sr. AR.

Date of Hearing : 05 . 10 . 2023
Date of Pronouncement : 07 . 11 . 2023

ORDER

Per : Kuldip Singh, Judicial Member:

At the very outset it is brought to the notice of the Bench by the Ld. A.R. for the appellant Ms. Rakhi Anant Sawant (hereinafter referred to as the assessee) that there is a delay of 928 days in filing the present appeal and sought to condone the delay by moving an application for condonation of delay supported with an affidavit on the grounds inter-alia that the impugned order passed by the [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) on 15.05.2019 was received by the assessee

on 10.03.2020 from the office of her tax advisor but appeal could not be filed before the Tribunal within 60 days due to Covid-19 Pandemic; that the authorized representative of the assessee who was looking after the tax matter went back to his native place when the nationwide lockdown was imposed on 24.03.2020 due to Covid-19 and did not return; that only on receipt of the demand notice the assessee came to know that the appeal to be filed against the impugned order has not been filed and she started contacting her counsel but she came to know that during the second wave of Covid-19 he passed away due to pandemic; that thereafter the assessee engaged one Mr. Sunil Khanna, tax practitioner to file the appeal who after retrieving/reconstructing the record prepared the appeal but he also passed away on 16.08.2022; that thereafter the assessee with great difficulties located her brief only in the last week of October 2022 engaged new counsel and filed the appeal; that the delay in filing the aforesaid appeals are neither intentional nor malafide but due to unavoidable circumstances beyond her control.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the aforesaid contentions made by the assessee supported with an affidavit that due to sudden unfortunate demise of two of her counsels due to Covid 19 appeals could not be filed within limitation and that due to onslaught of pandemic

Hon'ble Supreme Court in suo-moto in writ petition (Civil) No.3 of 2020 dated 08th March 2021 extended the limitation of filing appeal/application etc. from 15.03.2020 to 04.03.2021. In these circumstances and keeping in view the "sufficient cause" proved on file by the assessee the delay of 928 days in filing the present appeal is required to be condoned.

4. Hon'ble Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) held that "it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non deliberate delay." Keeping in view the discussion made in the preceding paras and following the ratio laid down by the Hon'ble Supreme Court in case of MST Katiji & Others (supra), we are of the considered view that there is "sufficient cause" to condone the delay of 928 days in filing the appeal, hence the same is hereby condoned. So this appeal is ordered to be registered and taken up for disposal on merits.

5. The assessee by filing the present appeal, sought to set aside the impugned order dated 15.05.2019 passed by the Ld. CIT(A) qua the assessment year 2006-07 on the grounds inter-alia that :-

"1. The Learned Commissioner of Income Tax (Appeals)-4, Mumbai [CIT(A)] erroneously confirmed the penalty of Rs.2,15,270/- u/s 271(1)(c) of the Act vide order dated 15.05.2019 as levied by the AO holding that the appellant has failed to discharge its onus of proving the genuineness of the expenses claimed in its P&L A/C.

2. The Ld. CIT(A) erred on facts and in law in confirming the penalty before deciding the quantum appeal Whereas The Hon'ble ITAT vide its

order dated 28-09-2016 has set aside CIT(A)'s order upholding quantum assessment and has restored the appeal of the appellant back to his file to decide the same afresh after providing opportunity of being heard to the appellant and that the same was pending for hearing before him

3. The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal.”

6. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of assessment framed under section 143(3) read with section 263 of the Income Tax Act, 1961 (for short ‘the Act’) determining the total income at Rs.14,92,940/- as against the assessed income of Rs.4,53,970/-, penalty proceedings have been initiated against the assessee by way of issuance of notice under section 274 read with section 271(1)(c) of the Act. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to levy the penalty of Rs.2,15,270/- being 100% of the tax sought to be evaded under section 271(1)(c) of the Act.

7. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the penalty levied by the AO by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

8. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

9. At the very outset it is brought to the notice of the Bench by the Ld. A.R. for the assessee that the order passed by the Ld. CIT(A) in quantum appeal, on the basis of which penalty proceedings were initiated, has since been set aside by the Tribunal vide its order dated 28.09.2016 to decide afresh after providing opportunity of being heard to the assessee which is still pending before him. The Ld. A.R. for the assessee further contended that this contention was also made before the Ld. CIT(A) at the time of hearing of the quantum appeal but the Ld. CIT(A) has confirmed the penalty order without deciding the quantum appeal.

10. In the backdrop of the aforesaid undisputed admitted facts that quantum appeal challenging the addition on the basis of which penalty under section 271(1)(c) of the Act has been initiated is still pending before the Ld. CIT(A) penalty proceedings are not sustainable. The assessee has raised specific ground No.2 challenging the impugned order on the ground that the quantum appeal is still pending before the Ld. CIT(A).

11. In view of what has been discussed above, we are of the considered view that when quantum appeal is still pending before the Ld. CIT(A) against the assessment order making addition on account of disallowance of Rs.8,00,000/- against the assessee by virtue of the assessment order dated 11.02.2013 penalty proceedings are not sustainable.

12. So in view of the matter impugned order passed by the Ld. CIT(A) is hereby set aside and the AO is at liberty to proceed

as per law on decision of the quantum appeal pending before the Ld. CIT(A).

13. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 07.11.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 07.11.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.