

L.R. Talwar Vs. Deputy Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Oct-28-1994

Reported in : (1995)52ITD44(Delhi)

Judge : V Gandhi, M Mahajan

Appellant : L.R. Talwar

Respondent : Deputy Commissioner of

Judgement :

1. These three appeals by the assessee for the assessment years 1984-85, 1985-86 and 1986-87 are directed against common order of CIT (Appeals) dated 18-11-1988. The office of the Tribunal pointed out that impugned order was communicated to the assessee on 20-12-1988 and appeal was filed on 6-7-1992. Consequently, there was delay of three years six months and 17 days in filing the appeal.

2. The assessee-applicant has sought to get the delay condoned with the following averments : The assessee has filed appeals against the orders of Commissioner of Income-tax (Appeals), Bareilly for the assessment years 1984-85, 1985-86 and 1986-87 along with this application.

The order of the Commissioner of Income-tax (Appeals) was communicated to his counsel Sri Ram Ji Das on 20-12-1988. The assessee asked him to file the appeal against the said order.

It is pointed out that the assessee is engaged in the business of Exports and turnover runs into Crores and so he has to live mostly out of the country. Since then, he was in the impression that the appeals have been filed by his counsel Sri Ram Ji Das.

Unfortunately on 21-2-1991 Sri Ram Ji Das expired and he engaged another counsel Mr. Pradeep Kapoor, Chartered Accountant. In the meantime, appeals for the assessment years 1979-80, 1980-81 and 1982-83 were fixed by Commissioner of Income-tax (Appeals), Bareilly for hearing in May 1992, only then, the new counsel Mr. Pradeep Kapoor, checked the records and enquired about the details of other years where the same matter was involved.

It was only then, that the new counsel came to understand that although assessee was in impression that the appeals on this point have been pending before ITAT, whereas the correct position was that no appeal was filed by his then counsel.

The assessee has now filed these appeals with the request that the delay is not attributed to him, but it was the lapse on the part of his then counsel Sri Ram Ji Das, who was more than 80, and could not file the appeals for the reasons best known to him, and accordingly delay in filing these appeals may be condoned.

3. We have heard both the parties. Learned counsel for assessee-applicant submitted that in the circumstances of the case as mentioned above, the delay should be condoned. He relied upon decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition v.Mst. Katiji [1987] 167 ITR 471 to contend that courts must do even handed justice on merits in preference to scuttle a decision by dismissing the case as out of time. Normally when substantial justice and technical conditions are pitted against each other, the cause of substantial justice deserves to be preferred, for, the other side cannot claim to have a vested right in justice being done because of non-deliberate delay. Shri Sampath further contended that there could be no deliberate intention on the part of the assessee to delay the filing of appeal. Shri Sampath further drew our attention to appeals filed by the assessee for the assessment years 1979-80 and 1980-81 (IT Appeal Nos. 4727 & 4728/ Del./92) which were also fixed before the Bench and in which same issue was involved. The said appeals being in time, the issue was required

to be considered on merit. In the above circumstances, cause of justice would be advanced if the delay is condoned and appeals are disposed of on merits. These submissions of Shri Sampath were opposed by learned D.R.4. We have given careful thought to rival submissions of the parties.

The application filed by the assessee is not supported by any affidavit from Sri Ram Ji Das or Mr. Pradeep Kapoor, the counsels referred to in the application. It is not known as to when Sri Ram Ji Das was to file the appeal and how and under what circumstances, the assessee got the impression that appeals have been filed. Reference to record for assessment years 1979-80 and 1980-81 revealed that appeals for those years were heard by the CIT (Appeals) on 6-5-1992 and disposed of on 11-5-1992. There is reference to the orders of his predecessor for the assessment years under appeal. Thus even if it is accepted that applicant had the impression that appeals were filed by its counsel Sri Ram Ji Das, the fact of non-filing of appeals came to his knowledge near about 6-5-1992. The present appeals were filed only on 6-7-1992 and there is gap of two months for which no explanation has been rendered. It is settled law that delay of each day is to be explained and explanation must cover the whole period of delay. In the facts and circumstances of case we cannot hold that delay has been properly explained. *J.B. Advani & Co. (P.) Ltd. v. R.D. Shah*, CIT [1969] 72 ITR 395 (SC) the Commissioner refused to condone delay of about 45 days under Section 33A of Income-tax Act, 1922 and his order was approved by Hon'ble Supreme Court with the following observations : The learned counsel for the appellant-company has laid a great deal of stress on the hardship involved in the case. It can hardly be gainsaid that the company, even according to the order of the Tribunal, could have claimed a set off of the loss in question during the assessment year 1952-53. It was only for the first time before the Tribunal during the hearing of the appeal relating to the assessment year 1953-54 that the question was raised on behalf of the department that this loss was not allowable in the assessment year 1953-54. The company had, for good reasons, thought that, since the payment which had been made in settlement of contracts were recorded in the books for the year ending March 31, 1953, the loss was claimable during the assessment year 1953-54. The company had a good case for invoking the revisional jurisdiction of the Commissioner under Section 33A of the Act. Unfortunately the company did not

disclose any ground whatsoever for the delay between July 7, 1964, when the order of the Tribunal was announced and the date of the application which was August 21, 1964. According to Sub-section (2) of Section 33A the Commissioner may, on an application by an assessee for revision of an order passed by any authority subordinate to him, made within one year from the date of the order or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period, call for the record of the proceedings and make such order as he may think fit subject to certain restrictions which it is unnecessary to mention. The company, in the present case, can be said to have been prevented for sufficient cause from making an application under Section 33A within a period of one year from the date of the order of the Income-tax Officer in respect of the assessment year 1952-53 because of the decision of the Tribunal in respect of the assessment year 1953-54 in which for the first time the department was allowed to raise a new point as a result of which it was held that the company was entitled to set off the loss in question during the assessment year 1952-53 and not 1953-54. The serious hurdle in the way of the company is the period between the decision of the Tribunal and the date of the application (from July 7, 1964 to August 21, 1964). The application which was filed under Section 33A of the Act is completely barren of any explanation for this delay which had to be properly and satisfactorily explained.

The aforesaid decision is fully applicable to the facts of the case and it is held that delay in the present case has not been properly and satisfactorily explained.

6. The learned counsel relied upon decision in *Mst. Katiji's case* (supra). In the said case where State was applicant seeking condonation of delay, the court held that on account of impersonal machinery and inherited bureaucratic methodology imbued with note making, file pushing, and passing of the buck ethos, delay on the part of the State is less difficult to understand though more difficult to prove. In any event, the State which represents the collective cause of the community, does not deserve a litigant the non grata status. So also the approach of the courts must be to do even handed justice on merits in preference to the approach, which scuttles a decision on merits. It is true that after considering the facts of the case, the apex

court in that case condoned the delay. But the above decision cannot be read as an authority that delay in every case is to be condoned irrespective of fact whether it has been explained or not. The apex court has not laid down that period of limitation prescribed under the statute is to be ignored because it would lead to denial of substantial justice. Each case has to be considered on merit. In the case of CWT v. Meghji Girdharilal [1989] 177 ITR 294 Hon'ble M.P. High Court refused to condone the delay in the filing of application after considering case of Mst. Katiji (supra). There were several other cases to the same effect. For the aforesaid reasons, we hold that delay in the filing of appeals has not been properly explained. These appeals are not entertained and are dismissed as out of time.

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