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Court : Income Tax Appellate Tribunal ITAT Chandigarh

Decided On : Feb-24-2004

Reported in : (2004)88TTJ(Chd.)394

Appellant : Punjab Traders

Respondent : ito

Judgement :

The assessee has filed this appeal against the order of the Commissioner (Appeals), Patiala, dated 31-3-2000, in appeal No.IT/87/Commissioner (Appeals)/PTA/1999-2000, for the assessment year 1995-96, on the following ground -.

"That the learned Commissioner (Appeals) is not justified in upholding the addition of Rs. 2,90,133 made on account of alleged unaccounted sales to M/s Partap Bhangu Solvex (P) Ltd." According to the registry of the Tribunal, Chandigarh Benches, the appeal filed by the assessee was barred by a period of limitation of 2 years and 317 days because the assessee has filed this appeal in the office of Tribunal, Chandigarh Benches, by post on 22-5-2002, along with less Tribunal fee worth Rs. 1,585 and the requisite balance Tribunal fee was paid by the assessee in the Bank on 26-5-2003. So, the instant appeal filed by the assessee before the Tribunal became barred by a period of limitation of 2 years and 317 days.

The assessee filed condonation application contending therein that in the instant case of the assessee, the assessed income was to the tune of Rs. 3,21,980 and

the assessee was under a mistaken belief that the assessee deposited Tribunal fee at the rate of 0.50 per cent of the assessed income and when the assessee received a notice dated 21-5-2003, from the registry pointing out that the Tribunal fee deposited by the assessee was less by Rs. 1,585, the assessee immediately made the payment of the same on 26-5-2003, after receipt of the notice. However, on going through the facts, the assessee again noticed that the appeal fee was still less by Rs. 20 and so it deposited the same and receipt challan was also sent to the registry.

Thus, in this condonation application, the assessee contended that short payment made by the assessee was only on account of mistaken belief and without any mala fide intention, and so the delay in payment of the appeal fee by the assessee may be condoned.

Before us, learned authorized representative for the assessee reiterated the submissions which were contained in the condonation application of the assessee and submitted that since the appeal filed by the assessee was within time, it became barred by period of limitation on account of payment of short Tribunal fee which has taken place on account of mistaken belief of the assessee and not on account of any mala fide intention on the part of the assessee. So, a liberal view may be taken and any delay in payment of the appeal fee may be condoned. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the case of Vedabai Alias Vijayanatabai Baburao Patil v. Shantiram Baburao Patil & Ors. (2002) 253 ITR 798 (SC), wherein their Lordships have held as under : "In exercising discretion under section 5 of the Limitation Act, 1963, to condone delay for sufficient cause in not preferring an appeal or other application 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.

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. No hard and fast rule can be laid down in this regard. The court has to exercise its

discretion on the facts of each case keeping in mind that in constituting the expression "sufficient cause" the principle of advancing substantial justice is of prime importance. The expression "sufficient cause" should receive a liberal construction." learned Departmental Representative for the revenue merely opposed the condonation application filed by the assessee but was not able to controvert the factual submissions made by the learned authorized representative for the assessee before him.

On considering the facts and circumstances of the case of the assessee, one thing is clear. that had the assessee paid the requisite fee of the Tribunal, the appeal filed by the assessee would not have become barred by period of limitation which means that though the assessee filed the appeal within the period of limitation but the same became barred by period of limitation because the Tribunal fee deposited by the assessee along with the appeal was short. I have gone through the records and find that in the instant case though a number of defective memos were issued by the registry to the assessee hereinafter referred to as deposit of the Tribunal fee but none of them was served upon the assessee as the same were returned unserved by the postal authorities.

From the condonation application filed by the assessee, it appears that the assessee received the last notice dated 21-5-2003, from the registry for the short deposit of Tribunal fee, the assessee immediately made the payment of the same on 26-5-2003, and made good the short Tribunal fee deposited along with the appeal. From the facts it also appears that in fact the appeal filed by the assessee was simply a defective being on account of short deposit of the Tribunal fee which was a curable defect and the same has been done by the assessee immediately when it received the defective memo from the registry. Otherwise also, I do not find any reason for not depositing the requisite fee had the assessee not been under a mistaken belief that it was required to pay the Tribunal fee at the rate of 0.50 per cent of the assessed income.

Even the Hon'ble Apex Court in its decision (supra) has also clearly held that the court has to exercise its discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing

substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Following this principle laid down by the Hon'ble Apex Court, I am of the opinion that it is a fit case where merely on account of short deposit of the Tribunal fee which has taken place on account of mistaken belief of the assessee, the delay in deposit of short fee by the assessee which has been justifiably explained by the assessee, should be condoned in order to advance substantial justice.

Accordingly, in the facts and circumstances of the case, the delay of two years and 317 days in filing the appeal which has taken place on account of short deposit of the Tribunal fee, is hereby condoned.

Now, coming to the ground of appeal taken by the assessee relating to the grievance of the assessee that the Commissioner (Appeals) was not justified in upholding the addition of Rs. 2,90,133 made on account of alleged unaccounted sales to M/s Partap Bhangu Solvex (P) Ltd., briefly stated the facts of the case are that during the course of search and seizure operation which was carried out at the business and residential premises of M/s Partap Bhangu Solvex (P) Ltd., a diary was seized which showed transactions of M/s Partap Bhangu Solvex (P) Ltd. with various rice shellers of the area for purchase of rice bran and husk and according to this diary, the assessee had sold rice bran outside the books of account to M/s Partap Bhangu Solvex (P) Ltd. and this diary also contains the recorded and unrecorded entries of M/s Partap Bhangu Solvex (P) Ltd., Pasiana. The assessing officer supplied a photo copy of the relevant pages of this diary to the assessee and after considering the reply of the assessee, the assessing officer was of the opinion that the assessee has sold rice bran of the value of Rs. 2,90,133 out of the books of account to M/s Partap Bhangu Solvex (P) Ltd. and accordingly the assessing officer made an addition of Rs. 2,90,133 to the income of the assessee.

Aggrieved with the order of the assessing officer, the assessee went in appeal before the Commissioner (Appeals) who upheld the order of the assessing officer by making following observations in his order.

"Therefore, the appellant's contention that this diary was not maintained in the course of business is not acceptable. A number of rice shellers whose names figure in this diary have made disclosure under VDIS scheme and thus the veracity of the entries recorded in this diary cannot be doubted. The appellant had made the sales of rice bran to M/s Partap Bhangu Solvex (P) Ltd., Pasiona, to the extent of Rs. 2,90,133 which was not declared in the books of accounts. The addition of Rs. 2,90,133 on account of unaccounted sales of rice bran has, therefore, been rightly made by the assessing officer and calls for no interference. The appellant's plea on this ground of appeal is, therefore, dismissed." Before me, the main emphasis laid by the learned authorized representative for the assessee against the order of the Commissioner (Appeals) is on the legal issue. According to the learned authorized representative for the assessee, the entries in the books of account of M/s Partap Bhangu Solvex (P) Ltd., a third party, are not conclusive proof of the happenings as held by the Hon'ble jurisdictional High Court in the case of Chiranji Lal Steel Rolling Mills. v. CIT (1972) 84 ITR 222 (P&H), the ratio of which is reproduced below: "The copy of entries from the accounts of another firm supplied to the Income Tax Officer by the Sales-tax department was not legal and admissible evidence on which the Income Tax Officer could act for imposing extra burden of income-tax on the assessee when the original accounts were missing and could not be verified and when the assessee denied the entries therein" Learned authorized representative for the assessee also submitted that this Hon'ble Bench also dealt with the issue of reliance on the books of third party in the case of M/s Sadhu Ram Parkash Chand v. ITO, Ward-2, Patiala, in ITA No. 165/Chd/2000. Reference is made to p. 4 of the decision from 17th line from the top which is reproduced below : "On consideration of the material on record I am of the view that the addition made in this case is bad in law and is based on insufficient material. It is true that in search, copy of Bill No. 1208, dated 15-9-1992, was found from the premises of M/s Sangrur Vanaspati Mills Ltd. The revenue in appeal against the order of Commissioner (Appeals) must have carried further investigation in the case of above mill and found that the bill in dispute was not shown in sales by the mill. The party further lack credibility. The assessing officer of Sangrur Vanaspati Ltd. might have written to the assessing officer of the assessee about bill No. 1208 but except for copy of bill no further information was

brought on record of the assessee to justify the legal inference that purchases vide Bill No. 1208, dated 16-9-1992, were made by the assessee. The assessee was not confronted with any evidence which was used against the assessee and which showed that the assessee had made undisclosed investment through purchases as reflected in Bill No. 1208, dated 16-9- 1992, of M/s Sangrur Vanaspati Mills Ltd. Similar addition made in other cases were deleted by the learned Commissioner (Appeals) and that order was confirmed by the Tribunal. The facts and circumstances being identical I am inclined to take the same view and hold that addition made is unjustified and is liable to be deleted." Reference is further invited to p. 6 from 16th line from the top line with reference to observations in ITA No. 699/Chd/1999 made which is also reproduced below.

" It is, therefore, evident that these invoices were not prepared for showing them in sale account but for some other purpose. It is further on record that above company was found to be indulging in surreptitious sales of goods. The party, therefore, lacked credibility.

The document found from their premises cannot be treated as conclusive evidence to make addition in the hands of others. The assessee right from the beginning had been asking the assessing officer to put to it any evidence which showed that it purchased or received the goods in question or made payment for them. No material was put to it. Then revenue authorities further failed to give evidence or G.R. Nos., truck Nos., sales-tax receipt Nos., etc., etc., to the assessee to prima facie prove that the purchases were made by the assessee and, therefore, addition of unexplained investment was justified. Enquiries might have been conducted in the case of M/s Sangrur Vanaspati Mills Ltd. The result of enquiry and the evidence which was used against the assessee was required to be put and confronted to the assessee. This was not done and the principles of natural justice were violated in this case.

Learned authorized representative for this assessee, thus, submitted that in view of the above, in the absence of any corroborating evidence, the books of third party cannot be relied upon for making the impugned addition.

On the other hand, learned Departmental Representative for the revenue except placing reliance on the reasoning given in the orders of the tax authorities below, was neither able to place before me any case law which is against the case law cited by the learned authorized representative for the assessee nor was able to bring to my notice any corroborative evidence to prove that the sales made by the assessee to M/s Partap Bhangu Solvex (P) Ltd., were outside the books of accounts other than the entries recorded in the diary of M/s Partap Bhangu Solvex (P) Ltd. I have considered the rival submissions of both the parties, perused the records and carefully gone through the orders of the tax authorities below and the case law cited by the learned authorized representative for the assessee.

In this case the admitted facts are that from the very beginning the assessee has been denying before the tax authorities below sale of any rice bran to M/s Partap Bhangu Solvex (P) Ltd., which is found recorded in the diary of M/s Partap Bhangu Solvex (P) Ltd. The revenue has not brought on record any other material which could show that the goods were sold by the assessee to M/s Partap Bhangu Solvex (P) Ltd., or that the payment was received by the assessee from M/s Partap Bhangu Solvex (P) Ltd. Even the assessing officer did not further investigate to find the G.R. number, name of the transporter, date of transportation of the goods, etc., from the assessee to M/s Partap Bhangu Solvex (P) Ltd. Hence, in my opinion in the absence of such corroborative, evidence brought on record by the department the sales made outside the books of accounts of the assessee do not stand proved merely on the basis of entries recorded in the diary of a third party, i.e., M/s Partap Bhangu Solvex (P) Ltd., as also held in the cases cited (supra) by the learned authorized representative for the assessee.

For the reasons stated above, I am of the considered opinion that the impugned addition made/sustained by the tax authorities below was not justified and the same is liable to be deleted. Accordingly, the order of the Commissioner (Appeals) in sustaining the impugned addition of Rs. 2,90,133 made on account of unaccounted sales to M/s Partap Bhangu Solvex (P) Ltd., is set aside and the ground of appeal taken by the assessee is allowed.