

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ITA No. 1102/CHD/2019
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Sandeep Bhardwaj, H.No. 1676, Sector 29-B, Chandigarh.	बनाम VS	The ITO, Ward 4(2), Chandigarh.
स्थायी लेखा सं./PAN No: AGSPB7560N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Amitoz Singh Kamboj, C.A.
राजस्व की ओर से/Revenue by : Shri Ahok Khanna, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 07.07.2021
उदघोषणा की तारीख/Date of Pronouncement : 09.07.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 31.12.2018 of CIT(A)-2 Chandigarh pertaining to 2010-11 assessment year is assailed on the following grounds :

- 1. The Id. CIT (A) have erred in laws and on the facts of the case by confirming the additions made the Ld. AO amounting to Rs. 12,24,310/- on account of unexplained cash deposits ignoring the fact that the same were explainable.*
 - 2. The Appellant craves permission to file/ raise/ amend any other ground of appeal at the time of hearing.*
2. However, before addressing the same, it is necessary to note that the assessee has moved an adjournment application on record. The Id. AR at the outset requested for permission to withdraw the application stating that the request for

adjournment had been moved on the grounds that the assessee having given up the original request for settling the appeal under 'Vivad Se Vishwas Scheme, 2020' will be arguing the appeal on merits and hence may need time. However, on considering the record, it was his request that the adjournment application moved by way of abundant may be permitted to be withdrawn as he is ready to argue the appeal. No objection was posed by the ld. Sr.DR to the said request. Accordingly, permitting the withdrawal, the ld. AR was required to argue the appeal.

3. Addressing the delay of 148 days pointed out by the Registry the ld. AR inviting attention to the Condonation of Delay application filed on record submitted that the explanation offered is supported by his own Affidavit dated 06.08.2019 filed as a counsel himself. Referring to these, it was submitted, that the assessee has pleaded that he was ignorant of the procedural and statutory requirements, hence, sought advice from his earlier counsel who as per the impugned order was Shri Sanjiv Sharma and others as noted in the impugned order itself. The assessee, it was submitted, was advised not to file any appeal. Subsequently, the assessee sought another opinion from him and was advised to file an appeal. For the said purpose challan fee was duly deposited on 27.05.2019 itself. However, since his office was being shifted

from Chandigarh to Mohali, the papers of the assessee inadvertently got misplaced and the appeal in the circumstances was filed on 07.08.2019.

3.1 Relying on these documents and submissions, it was his prayer that the delay has occurred on account of the peculiar facts of shifting of his office and is not on account of any fault of the assessee. Accordingly, relying upon these facts and submissions supported by his affidavit, it was his prayer that the delay may be condoned.

4. The ld. Sr.DR Mr. Khanna not disputing the facts on perusing the material available on record submitted that he has no objection to the delay being condoned in these peculiar facts and circumstances.

5. I have heard the submissions and perused the material on record. The Affidavit of the counsel available on record is found to support the Condonation of Delay application on record. It reads as under :

I, Amitoz Singh Kamboj s/o S.Baldev Singh R/o 2209 Pepsu Society, Sector 50-C, Chandigarh do solemnly affirm as under:

- 1. That I am a practicing Chartered Accountant and the counsel of Mr Sandeep Bhardwaj (PAN-AGSPB7560N) (hereinafter called as 'assessee') residing at H.No. 1676 Sector 29B, Chandigarh.*
- 2. That the Worthy CIT(A) Chandigarh have passed an order dated 31.12.2018 in assessee's case for the A.Y. 2010-11 and the same was received by the assessee on 11.01.2019 at his above mentioned address stated at para-1.*
- 3. That the assessee was not aware of the due date of the further appeal to Hon'ble ITAT which falls within 60 days i.e. 12.03.2019 from the receipt of the said order(i.e. 11.01.2019) and his previous counsel advised him of not filing of appeal to Hon'ble ITAT.*
- 4. That thereafter in May he approached me for a second opinion on filing appeal and we moved further with the process of filing of appeal and deposited the challan on 27.05.2019.*

5. *That in the meanwhile we have shifted our office premises from Chandigarh to Mohali.*
6. *That in the process of shifting inadvertently the appellate order handed over by the assessee got misplaced, thereby causing delay in filing appeal.*
7. *That in this way there has been a delay of 148 days, however, there had been no intention from my side nor from assessee side to jeopardize the interest of the revenue by playing the process of the filing of application. It is prayed that the delay may kindly be condoned.*

(Sd/-)

DEPONENT

VERIFICATION:

I, Amitoz Singh Kamboj, the above named deponent do hereby certify that the contents of para 1 to 7 are true to the best of my knowledge and belief.

DATE: 06.08.2019

(Sd/-)

DEPONENT

((emphasis supplied))

6. Considering the facts as deposed which are not opposed by the Revenue, I find that in the peculiar facts and circumstances of the present case, the delay has occurred for no fault of the assessee. It is seen that initially the delay as per the explanation offered has occurred on account of incorrect advice received by the assessee from his erstwhile A.R. and thereafter on account of shifting of the office premises of the newly appointed Authorized Representative. It is seen that in the facts of the present case, no undue advantage has been derived by the assessee in the late filing of the appeal and no right vested by the Revenue is found to be upset if the delay is condoned. Accordingly, satisfied with the explanation offered, I hold that the delay deserves to be condoned. Ordered accordingly.

7. The parties, thereafter, were directed to argue the appeal on merits, in case they were ready to do so.

8. The ld. AR inviting attention to the impugned order submitted that the appeal of the assessee has been dismissed in limine. Referring to the order, it was his submission that the dismissal of the assessee's appeal is not on merits. It was elaborated that though various opportunities have been given by the CIT(A) and on most of them, the counsel sought adjournment and in some, was not present. Despite this, for no fault of the assessee, the appeal was dismissed in limine. The assessee having appointed a counsel, it was his submission, cannot be said to be lax with his duties and responsibilities and should not be allowed to suffer on account of the mistake/carelessness of the counsel, if any. In the circumstances, it was his limited prayer that the impugned order may be set aside so as to afford the assessee an opportunity of being heard.

9. The ld. DR Mr. Khanna on considering the material available on record posed no objection to the said request.

10. I have heard the submissions and perused the material on record. On considering the same, I am of the view that the prayer of the assessee deserves to be allowed as after having appointed an Authorized Representative to represent him, the assessee can be said to have duly discharged his onus. The impugned order, even otherwise, it is seen is not in conformity with the statutory remit as set out in sub-section (6) of

Section 250 of the Income Tax Act, 1961. Accordingly, it is set aside back to the file of the CIT(A) with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The assessee in its own interests is advised to participate fully and fairly in the proceedings before the said authority as failing which, it is made clear, the CIT(A) would be at liberty to pass an order in accordance with law. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 9th July,2021.

Sd/-

(दिवा सिंह)
(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

आदेश की प्रतिलिपि अग्रेपित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant 2. प्रत्यर्थी/ The Respondent 3. आयकर आयुक्त/ CIT 4. आयकर आयुक्त (अपील)/ The CIT(A) 5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH 6. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar