

Mumbai ITAT

Members

Ravish Sood

Shamim Yahya

Lawyers (Assessee)

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Lawyers (Revenue)

Arju Garodia

Timeline

ITAT MUMBAI

26 Jun 2015

Case filed

06 Mar 2017

Listed for
hearing

23 Aug 2017

[Judgement](#)

MANISHA N DARJEE vs ITO 25(1)(3)



23.08.2017 Income Tax 4049-Mum-2015

Text Highlight Issues & Grounds of
appeal

Arguments

Holding &
Outcome

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-11, Mumbai, dated 21.05.2013, for A.Y. 2007-08, which in itself arises from the order passed by the A.O u/s 144 of the Income-tax Act 1961 (for short 'Act'), dated 24.12.2009. **The assessee assailing the order of the CIT(A) had raised the following grounds of appeal before us:-**

“ 1. The Learned Commissioner of Income tax Appeals passed the order without giving opportunity of being heard to assessee. During the appellate proceedings ITP (Income tax Practitioner) was not appeared to explain the grounds of appeal. CIT Appeals passed the order and dismissed the appeal filed by the assessee.

2. The learned Assessing Officer completed assessment under section 144 of the Act, Assessing Officer passed the order assessing total income 13,16,360/- as against return income 3,26,550/-. **Addition of Rs. 9,89,807/- made by the A.O. on purely unjustified estimated basis, its bad in law and not the Best Judgment Assessment.**

3. The appellant craves, leave to add to alter amend and or delete any or all of the above grounds of appeal”.

2. The present appeal filed by the assessee involves a delay of 706 days. The assessee explaining the reason for the delay involved in filing of the appeal, had therein filed an application dated 23.06.2015 seeking condonation of delay and an 'Affidavit' dated 02.07.2015. The assessee had deposed that though she was supposed to file an appeal before the Tribunal on or before 20.07.2013, however the same could only be filed on 23.06.2015, therein involving a delay of 706 days. The assessee had stated that as at the relevant point of time she was living in a Chawl which was taken on rent for a period of 11 months and was subject to redevelopment, therefore, most of the times the notices from the income tax department were not received by her. It was averred by the assessee that as she was not having sufficient knowledge about tax regime, therefore, as and when any notice would be received from the department, she would deliver the same to the Income Tax Petitioner (ITP) who was looking after her case. It was stated by the assessee

Law Referred

Income Tax Act, 1961

Section 142(1), Section 144

who suggested that an appeal against the order of the CIT(A) should have been filed before the Tribunal for relief, however the same by the said time involved a delay of 706 days .

3. That during the course of hearing of the appeal the Ld. A.R. for the assessee averred that the assessee had no knowledge of tax regime, which thus had resulted into a long gap on her part to file an appeal before the Tribunal with the assistance of a Chartered Accountant. It was submitted by the Ld. A.R. that the failure on the part of the assessee to comply with the notices and file an appeal before the Tribunal, which was in her own interest, was absolutely bonafide, and there was no reason for her to avoid the same. It was thus submitted by the Ld. A.R that the inadvertent delay in filing of the appeal in all fairness may be condoned.

4. We have given a thoughtful consideration to the facts leading to the delay in filing of the present appeal by the assessee, as well as perused the application seeking condonation of delay, and are of the considered view that the assessee had been fair enough to state the facts which had led to a bonafide delay in filing of the present appeal, which to our understanding cannot be attributed to any malafide or lapses/laches on the part of the assessee. We though are of the considered view that the assessee should have been more cautious and vigilant as regards filing of the appeal within the stipulated time period, however, keeping in view the circumstances in which the present assessee was placed, are thus of the view that the delay involved in filing of the appeal in all fairness and in the interest of justice should be condoned. We thus in the backdrop of our aforesaid observations condone the delay involved in filing of the present appeal by the assessee. The application seeking condonation of delay filed by the assessee is thus allowed.

5. Briefly stated, the facts of the case are that the assessee had filed her return of income for A.Y 2007-08 on 31.10.2007, declaring total income of Rs. 3,26,550/-. The case of the assessee was taken up for scrutiny assessment and a Notice u/s 143(2), dated 26.02.2008 was issued and served upon the assessee. Thereafter, a Notice u/s 142(1), dated 05.02.2009 was issued and duly served upon the assessee, however, the same was not complied with by her. A few more Notices u/s 142(1) were issued and duly served upon the assessee, which too met the same fate and remained uncomplied with by the assessee. The A.O vide a final Notice u/s 142(1), dated 03.12.2009, after referring to the series of non compliance of the earlier notices, therein called upon the assessee for necessary compliance, failing which the assessment was to be framed u/s 144 of the 'Act'. In compliance to the aforesaid notice dated 03.12.2009, the representative of the assessee appeared and placed on record reply to certain queries. The A.R of the assessee was directed by the A.O to furnish certain additional details and the case was adjourned to 21.12.2009. That on the stipulated date as

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