IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Income Tax Appeal No.279 of 2016
Date of Decision: 09.02.2017

Krishan Lal ..Appellant

versus

Commissioner of Income Tax, Aayakar Bhawan, Karnal, Haryana

..Respondent

CORAM: HON'BLE MR JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. S.K.Mukhi, Advocate, for the appellant.

Mr. Yogesh Putney, Advocate, for the respondent.

RAMENDRA JAIN, J.

1. The instant appeal has been filed by the appellant under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for setting aside the order dated 03.5.2016 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh, affirming the order dated 10.12.2015 (Annexure A-2) passed by the Commissioner of Income Tax (Appeals)-2, Gurgaon, for not condoning the delay of 127 days in filing the appeal, resulting in dismissal of the appeal as not maintainable being barred by time.

2. Brief facts of the case are that after filing return declaring income at ₹ 99,750/- and `₹ 5,05,000/- from agriculture, the Assessing Officer, received Annual Information Report (for short “AIR”) with respect to deposit of the amount in the Axis Bank account, of the appellant. However, on account of some personal difficulty, the appellant could not

appear before the Assessing Officer. Consequently, the Assessing Officer, vide order dated 25.3.2013 (Annexure A-1), received by the appellant, on 30.3.2013, made additions under Section 69 of the Act. Being dissatisfied, the appellant instructed his counsel to take necessary action in the matter. However, on account of misplacement of the record, the appellant's counsel could not file the appeal in time. On receipt of a demand notice, imposing penalty by the Assessing Officer, under section 271(1)(c) of the Act, the appellant after obtaining a certified copy of the impugned assessment order, on 22.8.2013, approached his counsel and got filed the appeal on 4.9.2013. It is because of this reason that delay of 04 months and 05 days occurred in filing the appeal. However, the Commissioner of Income Tax (Appeals), without appreciating the facts of the case, the affidavits, furnished by both the appellant and his counsel, on the record, explaining reasons for not filing the appeal in time, the well settled principles of law, held that the appeal filed by the appellant was not maintainable being barred by time and, accordingly, dismissed the same vide impugned order dated 10.12.2015 (Annexure A-2). Being further aggrieved, the appellant filed an appeal before the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, who too dismissed the appeal of the appellant vide order dated 03.05.2016 (Annexure A-3), affirming the order dated 10.12.2015 (Annexure A-2) passed by the Commissioner of Income Tax (Appeals)-2, Gurgaon.

3. Learned counsel for the appellant contended that the appellant has been condemned unheard without taking into consideration the well settled principles of law that no one should be condemned unheard. The authorities below, keeping in view the principles of interest of justice, should have afforded an opportunity of hearing to the appellant before

dismissing the appeal by holding that it is not maintainable being barred by time.

4. After giving our thoughtful considerations to the submissions raised by learned counsel for the appellant, we find that the authorities below should have decided the appeal on merits instead of dismissing it straightway on the ground of delay and laches, inasmuch as the assessee-appellant has been able to show reasonable cause in delayed filing of the appeal. The explanation furnished by the assessee in not approaching the appellate authority, as noticed above, appears to be plausible.

5. In view of the above discussion, the appeal is allowed. The impugned orders dated 10.12.2015 (Annexure A-2) passed by the Commissioner of Income Tax (Appeals) and dated 3.5.2016 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, are set aside. Consequently, the case is remitted back to the Commissioner of Income Tax (Appeals)-2-Gurgaon, to decide the appeal of the appellant on merits, in accordance with law, after affording an opportunity of hearing to the parties.

6. Parties are directed to appear before the Commissioner of Income Tax (Appeals) -2, Gurgaon, on 21.03.2017.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

09.02.2017
VK

1. Whether speaking/reasoned Yes/No

2. Whether reportable Yes/No