

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 337 of 2016

Date of decision: 25.9.2017

**Smt. Shakuntla Thukral Wife of Late Shri. Mathura Dass Thukral,
Prop. M/s Neeraj Knitwears, 6590-Hargobund Nagar, Ludhiana,
Punjab.**

.....Appellant

Vs.

**Commissioner of Income Tax, Aayakar Bhawan, Rishi Nagar,
Ludhiana, Punjab.**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sunil Kumar Mukhi, Advocate for the appellant.

Mr. Rajesh Katoch, Senior Standing Counsel for the
respondent

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 12.04.2016, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh (in short, "the Tribunal") in I.T.A. No.429/Chd/2013, for the assessment year 2005-06, claiming following substantial questions of law:-

"A) Whether the ITAT is justified in rejecting the appeal against order under Section 271(1)(c) of Income Tax Act, on the ground of delay though supported by affidavit of counsel

in support of delay ignoring merits of the case and against well settled law that confirmation of order on quantum does not imply confirmation of penalty wherein under similar facts and circumstances, this Hon'ble High Court had condoned the delay in the case of ***Shri Harish Kumar Chhabra Vs. CIT Ludhiana*** (2013) 50 I.T. Rep. 389 (P&H)?

B) Whether the order of ITAT is perverse and deserves to be set aside being devoid of proper appreciation of facts and against well settled law?"

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The appellant-assessee is a resident of Ludhiana. She is engaged in the business of manufacture, purchase and sale of cloth and fabrication. She is a regular assessee under the Act. She filed her return of income for the assessment year in question declaring total income at ₹ 2,80,161/- on 31.10.2005. The Assessing Officer passed order dated 27.12.2007 under Section 143(3) of the Act assessing income at ₹ 58,67,550/-. The addition was made on the ground of suppression of closing stock amounting to ₹ 28,73,640/- and on account of unaccounted job work done. The Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act. The assessee appeared and explained that the imposition of penalty was not maintainable under the law. According to the assessee, on the issue of suppression of closing stock, total stock of ₹ 27,45,000/- was lying with her. Besides, she was having stock of other parties worth ₹ 28,73,640/-. The assessee had taken insurance on entire stock since the stock was in her custody, and the responsibility for safety laid with her. To take credit limits and loans from the Bank, the assessee declared the

entire stock as her own. The Assessing Officer summoned record from the Bank and after perusing the same, made addition to the income of the assessee. On the second issue, regarding addition of ₹ 5,20,889/-, on account of unaccounted work done, it was explained to the Assessing Officer that the various items could not be accounted for in the books of account due to clerical error. The Assessing Officer imposed penalty of ₹ 11,13,430/- under Section 271(1)(c) of the Act, vide order dated 27.09.2010, Annexure A.1 as the quantum was confirmed. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 06.06.2011, Annexure A.2, the appeal was dismissed confirming the penalty. The appeal before the Tribunal was to be filed within 60 days. It was only in April 2013 when the counsel for the assessee received the order passed by the Tribunal in quantum appeal, it transpired that there was mistake about non filing of the penalty appeal under Section 271(1)(c) of the Act. Vide order dated 12.04.2016, Annexure A.3, the Tribunal dismissed the appeal on the ground that the appeal was highly belated. It was recorded that there had been no diligence on the part of the assessee and that the party guilty of negligence could not ask for condonation of delay of 613 days in filing the appeal. Hence, the instant appeal by the appellant-revenue before this Court.

3. We have heard learned counsel for the parties.

4. Admittedly, the assessment order in the present case was passed on 27.12.2007 under Section 143(3) of the Act, assessing income at ₹ 58,67,550/-. The addition was made on the ground of the suppression of closing stock and on account of unaccounted job work done. Penalty proceedings under Section 271(1)(c) of the Act were initiated. Penalty of

₹ 11,13,430/- was imposed under Section 271(1)(c) of the Act on 27.09.2010. The assessee filed an appeal before the CIT(A) which was dismissed vide order dated 06.06.2011, Annexure A.2. The appeal before the Tribunal was to be filed within a period of 60 days. The same was filed in April 2013. The explanation put forth by the assessee was that she submitted copy of the order to the learned counsel but the file remained pending with him and it was only in April 2013, when the counsel received the order passed by the Tribunal in quantum appeal that the error was noticed and the counsel realized the mistake about non filing of the penalty appeal under Section 271(1)(c) of the Act. It was categorically recorded by the Tribunal after examining the entire material that the assessee could not bring on record any evidence or reasons to demonstrate that she was prevented by inevitable circumstances or there was a sufficient cause for not filing the appeal in time which was late by 613 days. Thus, the Tribunal declined to condone the delay in filing the appeal and dismissed the same.

5. This Court in VAT Appeal No. 47 of 2012 (*M/s Hansaflon Plasto Chem. Ltd. Vs. State of Haryana and others*) decided on 5.07.2012 following the decisions of the Hon'ble Supreme Court in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another*, (2010) 5 SCC 459 and *R.B. Ramlingam Vs. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892* had analyzed the broad principles for condonation of delay under Section 5 of the Limitation Act, 1963 as under :-

“6. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to

destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

7. The Hon’ble Apex Court in ***Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam’s*** cases (supra) noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.”

6. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. No cogent and satisfactory explanation has been furnished by the learned counsel for the appellant-assessee even before this Court for inordinately long delay of 613 days in filing the appeal before the Tribunal. The explanation furnished by the assessee as noticed in the earlier part of the order does not satisfy the test of sufficient ground

as contemplated under Section 5 of the Limitation Act, 1963. Thus, reliance of the learned counsel for the appellant on judgments of this Court in *Krishan Lal Vs. Commissioner of Income Tax, Aayakar Bhawan, Karnal, Haryana*, ITA No. 279 of 2016, decided on 09.02.2017 and *Shri Harish Kumar Chhabra Vs. Commissioner of Income Tax, Ludhiana*, ITA No. 38 of 2012, decided on 28.08.2012, is of no help to him.

7. In view of the above, we do not find any ground to differ with the view taken by the Tribunal in dismissing the appeal on the ground of delay. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 25, 2017
'gs'

(Amit Rawal)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes