$~16, 17 & 18

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 744/2018

GREEN LINE PUNJAB ..... Appellant

Through: Mr. K.R. Manjani & Mr. Tarun Aswani, Advocate.

versus

ITO(TDS) WARD 50(5)/74(3) ..... Respondent

Through: Mr. Puneet Rai, Senior Standing Counsel for Revenue with Ms. Adeeba Mujahid, Jr. Standing Counsel & Mr. Nikhil Jain, Advocate.

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\+ ITA 1207/2018

GREEN LINE DELHI ..... Appellant

Through: Mr. K.R. Manjani & Mr. Tarun Aswani, Advocate.

versus

ITO (TDS) WARD 50(5)/74(3) ..... Respondent

Through: Mr. Puneet Rai, Senior Standing Counsel for Revenue with Ms. Adeeba Mujahid, Jr. Standing Counsel & Mr. Nikhil Jain, Advocate.

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\+ ITA 1217/2018

GREEN LINE EARTH LTD ..... Appellant

Through: Mr. K.R. Manjani & Mr. Tarun

Aswani, Advocate.

versus

ITO (TDS) WARD 50(5)/74(3) ..... Respondent

Through: Mr. Puneet Rai, Senior Standing Counsel for Revenue with Ms. Adeeba Mujahid, Jr. Standing Counsel & Mr. Nikhil Jain, Advocate.

% Date of Decision: 16th November, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The Appellants, Assessees, have impugned the common order dated 15th January, 2018, passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 1102/Del/2016, 1103/Del/2016 and 1104/Del/2016 for Assessment Years ('AY') 2002-03 and 2003-04. The ITAT, dismissed the said appeals by holding them to be barred by limitation, being filed after a delay of 261 days.

2. This Court on 4th December, 2018, framed the following common question of law:

> *"Whether the Income Tax Appellate Tribunal was right in dismissing the application for condonation of delay in filing the appeal?"*

3. Brief facts leading to the filing of the present appeals are that survey operation under Section 133A of the Income Tax Act, 1961 ('the Act') was carried out on the Assessees' premise on 17th March, 2003, to verify the

Assessees' compliance with the provisions of Chapter XVII (Collection and Recovery of Tax) of the Act. The Assessing Officer ('AO') thereafter passed separate assessment orders under Section 201(1) read with Section 201(1A) of the Act, all dated 29th March, 2011, calculating the Assessees' TDS liability and further referred the matter to the prescribed authority for the purpose of penalty proceedings under Section 271C of the Act.

4. The Assessees' preferred their respective appeals before the Commissioner of Income Tax (Appeals) ['CIT(A)'], challenging the assessment orders, inter alia, on the ground that the said assessment orders dated 29th March, 2011, are barred by limitation. The CIT(A) after considering the facts of the case, dismissed the Assessees' appeals, inter alia, holding that the assessment orders have been passed within limitation inasmuch as the survey was conducted on 17th March, 2002, and subsequent, notices for initiation of proceedings under Section 201(1) were issued to the Assessees on 7th February, 2001, i.e., before the end of Financial Year ('FY') 2010-11.

5. Being aggrieved by the orders of the CIT(A), the Assessees' filed appeals before the ITAT along with applications for condonation of delay of eight and half months. The ITAT vide its common impugned order dated 15th January, 2018, dismissed the Assessees' appeal, being barred by limitation. The ITAT held that there is a disparity in the reason provided by the Assessees in their applications for condonation of delay and the Affidavit of Mr. B.S. Bhatia, annexed thereto.

6. The learned counsel for the Assessees, states that Mr. B.S. Bhatia, was the authorised representative of the Assessees and had represented the

Assessees before the AO as well as the CIT(A). He states that on receipt of the CIT(A)'s orders dated 23rd March, 2015, Mr. B.S. Bhatia, handed over the papers to the accounts branch of the Assessee for collating details to enable him to prepare further appeals to the ITAT. Mr. B.S. Bhatia, was duly instructed to file the appeals, however, it appears that Sh. B.S. Bhatia lost sight of the issue and the papers got mixed up. He states that it was on receipt of recovery notice dated 17th February, 2016, it came to light that the appeals have not been filed before the ITAT. The Assessees in the aforesaid facts, took steps to file the appeal before the ITAT along with an application for condonation of delay, duly supported with the affidavit of Mr. B.S. Bhatia. He states that the ITAT has dismissed the applications for condonation of delay and dismissed the appeals on the ground of limitation alone. He states that the ITAT failed to appreciate that the facts leading to the delay in filing of the appeals was bonafide and unintentional. He states that the Assessee shall suffer grave prejudice if the delay in filing the appeals is not condoned and if the Assessees are denied of an opportunity to have their matters heard on merits.

7. He states that in the facts of this case, the Assessees had been diligent inasmuch as the authorised representative had been timely instructed to file the appeals and therefore, it is a fit case for condoning the delay in filing the appeals before the ITAT. He states that this Court may condone the delay in filing the present appeal before the ITAT and remand the matter to ITAT for hearing the appeal on the merits. He states that this Court may condone the delay as the default occurred due to the unintentional mistake of the authorised representative.

8. He states that the Supreme Court in the case of ***Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., JT 1987 (1) SC 537***, has given various directions which makes it incumbent upon Courts to ensure that in the interest of justice, the matter is not to dismissed on technical grounds but must be disposed of on merits.

9. He states that the Assessees have a good case on merit and therefore, they should not be denied the opportunity to have their appeals decided on merits.

10. The learned senior standing counsel for the Respondent states that the reasons stated by the Appellant in its applications seeking condonation of delay are vague and the delay in filing the appeals has not been explained satisfactorily.

11. We have perused the paper book. It is not in dispute that Mr. B.S. Bhatia, accountant, was representing the Assessees before the AO and the CIT(A). His appearance on behalf of the Assessees is duly recorded in the order passed by the CIT(A). The Assessees have also filed on record the affidavit of Sh. B.S. Bhatia owning up to the fact that the Assessees had instructed filing of the appeal and the non-filing happened due to a human error. In view of his affidavit, it appears that there was a bonafide mistake on the part of the Assessees in pursuing the remedy.

12. In the assessment orders, the AO, in addition to determining the demand has also referred the matter to prescribed authority for initiation of penalty proceedings against the Assessees. In this regard it would be appropriate to refer to the decision of Supreme Court in ***Collector, Land Acquisition, Anantnag*** (supra), wherein it was opined that there is no

presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. Therefore, in light of the facts that initiation of penalty proceedings has been referred by the AO, it would be in interest of justice that the merits of the assessment orders are tested in the appeals before ITAT rather than the Assessees being deprived of remedy in appeal due to the aforesaid default of delay.

13. In this view of the matter, we set aside the common impugned order dated 15th January, 2018, and condone the delay in filing of the appeals before the ITAT and restore the appeals to the file of the ITAT to hear the appeals on merits, subject to payment of costs imposed as under. We make it clear that we have not examined the merits of the matters and the rights and contentions of both the parties are left open. Thus, the question of law framed is accordingly answered in favour of the Assessees.

14. The Appellants are directed to pay costs of Rs. 15,000/- for each appeal and therefore, a total amount of Rs. 45,000/- to be deposited with Delhi High Court Legal Services Committee, within a period of two weeks and further file a proof of payment before this Court as well as the ITAT.

15. Accordingly, the present appeals are disposed of in the aforesaid terms.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 16, 2022/msh/aa.