IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-855-2008
Date of decision:- 11.04.2023

Jagjiwan Lal ....Appellant

vs.

Commissioner of Income Tax, Ludhiana ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Pankaj Jain, Sr. Advocate
Mr. Divya Suri, Advocate
for the appellant.

Mr. Saurabh Kapoor, Sr. Standing counsel
for the respondent.

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Ritu Bahri, J.

The present appeal has been filed under Section 260-A of the Income Tax Act, 1961 (for short 'Act 1961') seeking setting aside of order dated 28.03.2008 (A-3) passed by Income Tax Appellate Tribunal, Chandigarh Bench 'B' passed in ITA-696/Chandi/2007 for the assessment year 2003-2004.

The case in brief is that the assessee filed the return of income on 09.12.2003 at an amount of Rs.35,315/-, which was processed under Section 143 (1) of Act 1961 on 14.05.2004 and the statement of the assessee was recorded on 20.02.2004. The assessment was completed on 31.03.2006 (A-1). Feeling aggrieved against the order dated 31.03.2006, an appeal was filed on 25.04.2006 by the assessee before CIT (A). This appeal was withdrawn on 04.09.2006 (A-2) to challenge the assessment order before this Court by filing writ petition. Thereafter, CWP No. 16097-2006 was filed by the assessee but the same was also withdrawn, vide order dated 12.10.2006 (A-9) with a liberty to pursue the remedies in accordance with law. The appellant-assessee then filed an application under Section 154 before CIT (A) to grant the opportunity of pleading the case but the same was dismissed on 10.05.20007 (A-5). Then the appellant-assessee preferred an appeal before the Tribunal on 29.06.2007 (A-6). An affidavit dated 23.02.2008 (A-7) has also been filed with the appeal. This appeal was also dismissed, vide order dated 28.03.2008. Hence the present appeal.

In compliance of order dated 16.01.2023, learned counsel for the appellant has produced copy of order dated 05.04.2006 passed in CWP No. 2119-2006. The petition i.e CWP No. 2119-2006 was ordered to be dismissed as withdrawn with liberty to avail alternative statutory remedy to challenge order passed in respect of assessment year 2003-2004. After this order, the petitioner again approached this Court by filing CWP No. 16097-2006 which was also ordered to be dismissed as withdrawn and the operative part of the order dated 12.10.2006 reads as under:-

> *"Against the order of assessment noticed in the above order, it is stated that the petitioner preferred an appeal, which has since been withdrawn. The voluntary step taken by the petitioner withdrawing the appeal does not furnish cause of action to file the second writ petition on the same issue on which writ petition was earlier withdrawn.*
>
> *At this stage, learned counsel for the petitioner seeks permission to withdraw the writ petition, to pursue his other remedies, if any, in accordance with law.*
>
> *Dismissed as withdrawn."*

After the above order was passed on 12.10.2006 by this Court, the petitioner preferred an appeal before the Tribunal, which was also dismissed vide impugned order dated 28.03.2008 (A-3) and the operative part of the order reads as under:-

8. We have given on careful consideration to the rival contentions. In this case, the assessee has consciously withdrawn the appeal before the Commissioner of Income Tax(A) and approached the Hon'ble High Court for appropriate relief under its writ jurisdiction. Subsequently, the writ petition has also been withdrawn by the assessee for unstated reasons. The Commissioner of Income-Tax(A) was approached u/s 154 claiming a mistake in his order and requesting for restoration of appeal. The said request was not acceded to by the Commissioner of Income Tax (A) on the ground that there was no mistake in his earlier order and, therefore, the power vested in him u/s 154 could not be exercised. It is clarified that the assessee is not in appeal against the decision of the Commissioner of Income Tax(A) in rejecting the application of the assessee u/s 154. The assessee has filed the present appeal against the original order passed by the Commissioner of Income Tax (A) on assessee's application seeking permission to withdraw the appeal. There is a delay of 196 days in filing this appeal against the order of the Commissioner of Income Tax-(A) As pointed out earlier the only reason given by the assessee for the delay in filing the appeal against the order of the Commissioner of Income Tax (A) is that the assessee had approached the Hon'ble High court by way of writ petition which has resulted in delay in filing of the appeal. In our considered view, there is no satisfactory cause or the delay in filing of appeal against the decision of the Commissioner of Income tax (A) permitting withdrawal of appeal as requested by the assessee. The assessee has chosen alternative remedy by way of writ petition and for that purpose, has withdrawn the appeal before the Commissioner of Income Tax (A). The Commissioner of Income Tax (A) did not commit any mistake by acceding to the request of the assessee. Having spent more than six months from the date of order of the Commissioner of Income Tax (A) in pursuing the remedy from the High Court, the assessee has now turn around and filed an appeal against the earlier order of the Commissioner of Income Tax (A). The delay is attributable to the assessee's own decision for pursuing a remedy before the Hon'ble High Court in comparison to the statutory remedy available to him by way of appeal to the Commissioner o Income Tax(A). In fact, the appeal had been filed before the Commissioner of Income Tax (A) against the order of the Assessing Officer which appeal was later on withdrawn. There is no justifiable explanation for the delay in filing of the present appeal against the decision of the Commissioner of Income Tax(A). Moreover, the assessee has not been able to point out any infirmity in the order of the Commissioner of Income Tax (A) in having allowed the assessee to withdraw the appeal.

9. Taking the totality of the facts and circumstances of the case into consideration, we are of the considered view that it is not a fit case for condonation of delay in filing of the appeal against the decision of the

Commissioner of Income Tax (A) in having allowed withdrawal of appeal filed by the assessee. We accordingly dismiss the appeal of the assessee as not entertained.

10. In the result the appeal of the assessee is dismissed."

As per the above order, it is very clear that the Tribunal had dismissed the appeal, which was filed against the order of CIT (A) dated 04.09.2006, as the assessee was not able to give any explanation for the delay in filing of the appeal against the decision of CIT (A). Moreover, the assessee was not able to point out any infirmity in the order of CIT (A) whereby assessee was allowed to withdraw the appeal. It has further been observed that the assessee after withdrawing the writ petition again approached the CIT (A) under Section 154-A claiming a mistake in his order and requested for restoration of the appeal. The CIT (A) dismissed the appeal and it was clarified that the assessee is not in appeal against the decision of CIT (A) in rejecting the application of the assessee. The assessee has filed the appeal against the original order passed by CIT (A) on assessee's application seeking permission to withdraw the appeal. There was delay of 196 days in filing the appeal against the order of CIT (A).

The present appeal was admitted on 06.08.2009 on the following substantial question of law:-

"Whether on the true and correct interpretation of Section 253 (5) the "bonafide" withdrawal of appeal to approach writ Court and thereafter withdrawal for pursuing appeal remedy falls under the expression "reasonable cause" and "opportunity" for hearing?

In the present case, learned counsel for the appellant has not been able to point out any infirmity in the order passed by the Tribunal. Further the appeal of the assessee was not only dismissed on the ground of delay alone but it was dismissed on merits. The assessee had filed the return declaring the income of

Rs.35,315/- on 09.12.2003. Thereafter, the Assessing Officer made assessment under Section 143 (3) of the Income Tax Act of Rs.27,39,788/-. The appellant has also placed on record documents (A-10 to A-16), vide CM No. 24649-CII-2014 but these documents were available with the assessee earlier as well and he could have placed on record the same before CIT (A) as well as before the Tribunal. The Tribunal in the impugned order had rightly observed that the appellant had spent more than six months from the date of order of CIT (A) in pursuing his remedy. The delay is attributable to the assessee's own decision for pursuing a remedy before the High Court. There is no justifiable explanation for the delay in filing of the appeal.

Since the appeal was admitted way back on 06.08.2009 and there was no interim stay by this Court, no substantial question of law arises for consideration.

The appeal stands dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

11.04.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No