OD-27

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

ITAT/180/2025
IA NO: GA/1/2025

AKHILESH SINGH
VS
INCOME TAX OFFICER WARD 13/4 KOLKATA

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
AND
The Hon'ble JUSTICE MD. SHABBAR RASHIDI
Date : October 28, 2025.

Appearance :
Mr. Avijit Dey, Adv.
..for the appellant.

Mr. Aryak Dutt, Adv.
Mr. Amit Sharma, Adv.
….for the respondent.

The Court: The appeal under Section 260A of the Income Tax Act, 1961 is at the behest of the assessee and directed against the order dated June 12, 2025 passed by the Income Tax Appellate Tribunal, SMC Bench, Kolkata in ITA/2216/Kol/2024 relating to the assessment year 2017-2018.

The learned Advocate appearing for the appellant submits that, the appellant is an individual assessee. The appellant was dependent upon his accountant in so far as the income tax matters are concerned. He submits that, the accountant did not inform the appellant as to the notices issued during the course of the assessment proceedings relating to the said assessment year nor complied with such notices. He submits that, the accountant left the job. Consequently, the appellant was in the dark as to the entire proceedings.

Learned Advocate appearing for the appellant draws the attention to the Court to the explanation offered in Form 35 with regard to the condonation of delay. He acknowledges that, the explanation offered in column 15 Form 35 may not be construed to be sufficient. He, however, submits that, before the appellate tribunal, the appellant filed an affidavit affirmed before the Notary Public offering explanation with regard to the delay.

Learned Advocate appearing for the appellant submits that, the explanation offered by the assessee be accepted as sufficient and, that the appellant be allowed to contest the assessment proceedings in accordance with law.

Learned Advocate appearing for the Revenue objects to the prayer made on behalf of the appellant. He draws the attention of the Court to the so called explanation offered that too only before the appellate tribunal stage. He contends that, no substantial question of law exists for the High Court to intervene in the present appeal.

We find from the records that, the assessing officer required certain explanation from the assessee which was not forthcoming from the assessee. The assessee suffered an order of assessment in respect of which the assessee preferred an appeal albeit beyond the period of limitation prescribed. In Form 35 which is the form for filing of the appeal, the appellant offered the explanation that, the accountant who looked after the accounts and the income tax matters did not inform the appellant and hence, the appellant was unable to present before the assessing officer.

The appellate authority did not accept such explanation to be sufficient. The appellate authority did not condone the delay in making and filing the appeal. The decision of the appellate authority dated October 8, 2024 in this regard was upheld by the Income Tax Appellate Tribunal by the impugned order dated June 12, 2025.

With the deepest of respect, both the appellate authority as well as the Income Tax Appellate Tribunal proceeded to construe the explanation offered by the appellant in seeking the condonation of delay to be insufficient. It is trite law that, the appellate authority is to consider an application for condonation of delay, leniently. At the same time, the appellate authority is not required to render the condonation of delay as a mere formality. In the given case, if sufficient explanation is given with regard to the delay caused in preferring the appeal, the appellate authority should consider the same leniently and should accept the same.

In the facts and circumstances of the present case, the delay in approaching the appellate authority was sought to the explained on the basis of the conduct of the accountant. As rightly pointed out on behalf of the appellant, Form 35 although permits the explanation to be given in words not exceeding 500 in number, the appellant, however, did provide the explanation which may be construed to be sufficient, if considered leniently.

We find from the explanation given in Form 35, Sl No.15, by the appellant is that, there was an accountant who used to look after his accounts and the income tax matters. Such accountant received the notices issued by the income tax authority. Such accountant did not inform the assessee with regard to the notices. He also did not respond thereto.

As rightly pointed out by the learned Advocate appearing for the Revenue that, an affidavit was filed only before the Income Tax Appellate Tribunal seeking to explain the delay, more elaborately.

In the affidavit filed before the Income Tax Appellate Tribunal, the assessee reiterated that there was an accountant who used to look after the affairs and that such accountant did not bring to his notice the notices issued. In addition thereto, the appellant stated that such accountant left his job.

In the facts and circumstances of the present case, we are of the view that the assessee while preferring an appeal and at every stage thereafter offered some explanation was offered with regard to the delay occasioned in preferring the appeal. In our view, the appellate authority erred in not accepting such explanation. The income tax appellate authority erred in affirming the order of the appellate authority.

In such view, we set aside the decision of the appellate authority dated October 8, 2024 passed in respect of the assessment year 2017-18 as well as the impugned order dated June 12, 2025 passed by the Income Tax Appellate Tribunal. We direct the appellate authority to hear and dispose the appeal filed by the appellant against the order of assessment on merits treating the delay in filing the appeal as condoned.

We clarify that we did not pronounce the merits on the assessment in any manner whatsoever.

ITAT/180/2025 along with connected application being IA NO: GA/1/2025 stands disposed of accordingly without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

S.Seal/SD.