(2011) 12 AHC CK 0441

In the Allahabad High Court

Case No : Income Tax Appeal No. 131 of 2004

Anil Kumar Jaiswal APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Income Tax Act, 1961 — Section 154, 260
Limitation Act, 1963 — Section 5

Citation : (2011) 12 AHC CK 0441

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The assessee has filed this appeal u/s 260-A of the Income Tax Act, 1961 (in short referred to as ''the Act'') against the judgment and order dated 13.2.2004 passed by the Income Tax Appellate Tribunal Allahabad Bench, Allahabad (in short referred to as ''the ITAT'') in Income Tax Appeal No. 202(Allahabad) of 2002.

2. The assessee filed appeal before the Commissioner of Income Tax (Appeals), Varanasi which was beyond the prescribed limitation, as admittedly the order of the assessing authority was served upon the petitioner on 12.03.2000, and therefore, the limitation for filing the appeal before the Commissioner had expired on 11.04.2000. The appeal was filed along with an application u/s 5 of the Limitation Act for condonation of delay, which was supported by an affidavit explaining the delay. The reasons for delay as explained in the affidavit was that the counsel for the appellant Shri Satyendra Prasad kept on changing his mind and could not decided whether writ petition would lie before the High Court or an application u/s 154 of the Act should be filed. The CIT (Appeals) by order dated 23.01.2002 dismissed the appeal on the ground of delay. Aggrieved by the same, the appellant filed Income Tax Appeal No. 202 (Allahabad) of 2002 before the ITAT. It would be worthwhile to mention here that there were a large number of

appeals which had been filed beyond the prescribed limitation giving the similar explanation for the delay. All those appeals have been dismissed on different dates by the CIT (Appeals) whereupon the assessees had filed separate appeals before the ITAT. The ITAT vide order dated 13.02.2004 dismissed all the appeals holding that the delay in filing the appeals before the CIT (Appeals) had not been sufficiently explained.

3. We have heard R.R. Agrawal for the appellant and learned counsel for the respondents.

4. Learned counsel for the appellant has firstly submitted that the delay in filing the appeals before the CIT (Appeals) had been sufficiently explained and there were no deliberate delay or laches on the part of the assessee. It was on account of bona fide reasons attributable to the counsel that the appeals were filed beyond time against the order of the assessing authority before the CIT (Appeals), and therefore, the assessee should not be made to suffer on account of the indecision of the counsel. It has further been urged by the counsel for the appellant that this court, while dealing with similar order of the ITAT in Income Tax Appeal No. 25 of 2004 vide judgment dated 8th July, 2005 has already set aside the order of ITAT and also the order of the CIT (Appeals) and has remanded the matter back to the CIT (Appeals) to decide the appeal on merits after giving opportunity of hearing in accordance with law. A copy of the certified copy of the judgment dated 8.7.2005 in Income Tax Appeal No. 25 of 2004 has been placed on record. It has also been brought to our notice that this court in Income Tax Appeal No. 134 of 2004 (Om Prakash and Co. Vs. Commissioner of Income Tax and another) decided on 26.7.2006 has followed its earlier order passed in Income Tax Appeal No. 25 of 2004 decided on 8.7.2005 and has set aside the order passed by the Tribunal and remanded the matter to the CIT (Appeals) for deciding the appeals on merits.

5. We have perused the same and are satisfied that the facts in that appeal were similar to the facts of the present appeal, and therefore, following the said judgment and the reasons given therein, we allow the present appeal also and set aside the order of the ITAT dated 13.2.2004 and that of the CIT (Appeals) dated 23.01.2002 and remand the matter back to the CIT (Appeals) for deciding the same on merits after affording opportunity of hearing to the appellant assessee in accordance with law. In the facts and circumstances of the case, the parties shall bear their own costs.