(2008) 02 MP CK 0026

In the Madhya Pradesh High Court

Babulal Jain APPELLANT

Vs

ITO and Another RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:
Income Tax Act, 1961 — Section 253, 260A

Citation : (2008) 02 MP CK 0026

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. It is submitted by Mr. Ruchesh Sinha, learned Counsel on behalf of Mr. Sanjay Mishra, learned Counsel that the default has already been made good.

2. Mr. Sanjay Lal, learned Counsel for the revenue has entered appearance on behalf of the respondent assessee.

3. On a query being made, the learned Counsel for the parties agreed to finally argue the matter.

4. In view of the aforesaid the matter is finally heard.

5. The present appeal preferred u/s 260A of the Income Tax Act, 1961 (for brevity ''the Act'') is admitted on the following substantial question of law:

Whether the Tribunal is justified in the obtaining factual matrix to dismiss the appeal of the assessee on the ground that he had not been able to satisfy that sufficient cause did exist for condonation of delay ?

6. It is submitted by Mr. Ruchesh Sinha, learned Counsel for the appellant that the Tribunal has decided the appeal and rejected the same while the counsel for the assessee was not present and further the Tribunal has taken a very hyper technical view. The learned Counsel further submitted that the appeal was barred by 38 days and an application was filed explaining the delay occurred in

preferring the appeal. It is also urged by the learned Counsel for the appellant that the Tribunal has addressed itself more with regard to the right conferred on the appellant than to issue relating to condonation of delay and, therefore, the dismissal of the appeal is not justified in law.

7. Mr. Sanjay Lal learned Counsel for the revenue supported the order passed by the Tribunal.

8. To appreciate the submissions raised at the Bar, we have carefully perused the order passed by the Tribunal. On a scrutiny of the same it is evident that the Tribunal in para 4 of its order has expressed the opinion that the right of appeal is neither an absolute nor the ingredient of natural justice. It has also observed that the right to appeal is a statutory right and it can be circumscribed by the condition. It is also submitted that the Tribunal has referred to Section 253(5). The aforesaid provision confers power on the Tribunal to condone the delay when sufficient cause is shown by the appellant who prefers the appeal. Thus, there is no shadow of doubt that the Tribunal has the power to condone the delay. Once there is a power to condone the delay the question that arises is whether justifiable circumstances do exist to condone the delay. There can be no doubt that after the expiry of prescribed period the appeal can be admitted only if the appellant shows that sufficient ground exists for not preferring the appeal in time. The Tribunal has expressed the opinion that the cause shown by the assessee do not conclusively show that the same is sufficient.

9. In this context, we may refer, with profit to the decision rendered in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, their Lordships have expressed the view that while dealing with the application for condonation of delay liberal approach should be adopted. In the case of Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, the Apex Court while dealing with the issue of limitation expressed an opinion that the approach of the court in the matter of limitation shall be pragmatic but not pedantic.

10. On a perusal of aforesaid decisions it is clear that in the matter relating to the condonation of delay there has to be a liberal approach. On a perusal of the order passed by the Tribunal we are absolutely convinced that it has taken recourse to hyper technical view that the assessee has not been able to explain that sufficient cause did exist warranting condonation of delay. It is also worth mentioning that the delay was of only 38 days and an explanation in that regard was proffered.

11. In view of the aforesaid the order passed by the Tribunal on 29-1-2007 in ITA No. 133/Jab/2006 is set aside and the matter is remitted to the Tribunal to hear the appeal on merits. It is also directed that the assessee shall remain personally present before the Tribunal on 7-4-2008.

12. Accordingly, the appeal stands allowed. There shall be no order as to costs.

