(2012) 09 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : IT Appeal No. 2 of 2012 and IA No. 359 of 2012

Faisal Hameed APPELLANT

Vs

Income Tax Appellate Tribunal and Another RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Income Tax Act, 1961 — Section 144, 260A
Limitation Act, 1963 — Section 14

Citation : (2013) 256 CTR 429

Hon'ble Judges : M.M. Kumar, C.J;Mohammad Yaqoob Mir, J

Bench : Division Bench

Advocate : Z.A. Qureshi, for the Appellant; J.A. Kawoosa, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, C.J.—The instant appeal under s. 260A of the IT Act of 1961 is directed against the order dt. 9th July, 2012, rendered by

the income tax Appellate Tribunal, Amritsar (for brevity 'Tribunal') in ITA No. 614/ Asr/2011 in respect of asst. yr. 2005-06. The appeal has been

dismissed by the Tribunal holding the same to be time-barred, as the delay of 890 days has not been condoned. Facts are not in dispute. The

assessee-appellant challenged the assessment order based on the best judgment assessment under s. 144, IT Act, 1961 before the CIT(A),

Jammu Headquarters, Amritsar through his counsel Mr. H.U. Lone. On the basis of a defect, appeal was dismissed by CIT(A) on 14th May,

2009, because the memo of appeal was not duly signed by the assessee-appellant. Instead of challenging that order, learned counsel for the

assessee-appellant filed another appeal against the assessment order bearing No. 105 of 2009-10 on 22nd June, 2009. Mr. H.U. Lone, learned counsel for the assessee-appellant unfortunately died and the appeal was argued by Mr. Opinder Bhat, advocate. However, the appeal was

dismissed by CIT(A) on 20th May, 2010 on the ground that against the same order of assessment passed in respect of the same assessment year,

the assessee-appellant could not have filed another appeal. Still further another appeal was filed by Mr. Opinder Bhat engaged by the assessee-

appellant, who again challenged the order dt. 31st Dec., 2007, passed under s. 144 of the Act. The CIT(A) held that the appeal was filed within

time and ordered its registration as Appeal No. 74-12.01-10. The appeal was heard, but it was dismissed on 15th Sept., 2011 on the ground that

it was not maintainable. The CIT(A) observed that the assessee-appellant should have raised the issue before the Tribunal by filing the appeal

against the order dt. 14th May, 2009, which was originally passed in the first ever appeal. The assessee-appellant on the advice of his counsel

preferred an appeal before the Tribunal challenging the order dt. 15th Sept., 2011 passed by the CIT(A). However, the aforesaid appeal was

withdrawn and the application for withdrawing the appeal was allowed on 13th Dec., 2011. The Tribunal in its order dt. 13th Dec., 2011

observed that the assessee-appellant can file a fresh appeal along with an application for condoning the delay, if so advised.

2. In pursuance of the observation made by the Tribunal in order dt. 13th Dec., 2011, the assessee-appellant filed an appeal before the Tribunal

being ITA No. 614/Asr/2011 along with an application seeking condonation of delay. The appeal has been dismissed on 9th July, 2012, by the

impugned order being time-barred.

3. We have heard learned counsel for the parties.

4. It is evident from the narration of facts that the assessee-appellant has been pursuing one remedy or the other by filing the appeals as per the

legal advice tendered to him. It is well settled that if a litigant has initiated proceedings on the basis of legal advice tendered to him, such an event

would constitute sufficient cause for condoning the delay. In that regard, we place reliance on the provisions of s. 14 of the Limitation Act, Svt.

1995 (1938 A.D), which provides that if a person has been prosecuting with due diligence another civil proceeding then the period spent on such

proceedings should be excluded, provided proceedings are based on the same cause of action and it is prosecuted in good faith in such a Court on

account of defect of jurisdiction or other cause of a like nature. Even otherwise, we are of the considered opinion that right of one appeal is

recognized in all jurisdictions and the matter ought to have been decided by the Tribunal on merits. Accordingly, we are of the view, that the

application seeking condonation of delay of 890 days is liable to be accepted.

5. As a sequel to the above discussion, the instant appeal is allowed and the order dt. 9th July, 2012 is set aside. The delay of 890 days in filing the

appeal is condoned. The appeal is restored on the board of the Tribunal at its original number and the same shall be decided on merits in

accordance with law. The parties through their counsel are directed to appear before the Tribunal within one month.