
(2012) 04 DEL CK 0049

In the Delhi High Court

Case No : Writ Petition (C) 7892 of 2009

Narinder Kumar and Others

APPELLANT

Vs

CIT and Others

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Income Tax Act, 1961 — Section 144, 144(3), 264
Limitation Act, 1963 — Section 5

Citation : (2012) 189 DLT 307 : (2013) 212 TAXMAN 105

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Vibha Mahajan Seth, for the Appellant; Sanjeev Sabharwal, Senior Standing Counsel., for the Respondent

Final Decision : Allowed

Judgement

R.V. Easwar, J.—M/s Dewan Chand Dholan Dass & Co., a partnership firm, has filed the present writ petition through its partners seeking the issue of writ of certiorari or any other writ quashing the order passed by the Commissioner of Income Tax-VII, Delhi (hereinafter referred to as "CIT") on 17.9.2007 dismissing the revision petition filed by the petitioner firm u/s 264 of the Income Tax Act (hereinafter referred to as the "Act"). The petitioner firm was carrying on business in the export of walnuts and walnut kernels. In respect of the assessment year 2000-01, for the previous year ended on 31.3.2000, it filed a return of income on 30th October, 2000 declaring a loss of Rs. 3,80,68,466/- . The return was taken up for scrutiny by the Assessing Officer and several notices of hearing were issued and details were sought. There was only lukewarm compliance by the petitioner-firm in response to the notices issued by the Assessing Officer. Eventually, the Assessing Officer completed the assessment ex-parte u/s 144 of the Act to the best of his judgment on the ground that despite adequate opportunities the petitioner-firm was not co-operating in the assessment proceedings. He estimated the income of the petitioner firm at Rs. 1,96,47,232/- as against the loss declared by the assessee. The assessment

order u/s 144 of the Act was passed by him on 28.2.2003.

2. A revision petition u/s 264 of the Act was filed before the CIT on 16.1.2007 against the assessment order passed u/s 144 of the Act. Under sub-section (3) of this section, the revision petition ought to have been filed within a period of one year from the date of receipt of the assessment order. Since the revision petition was delayed inordinately, the petitioner-firm filed an application before the CIT for condonation of the delay in filing the revision petition. Several reasons were advanced by the petitioner-firm in the application for condonation of the delay in filing the revision petition. It was pleaded by the petitioner-firm that the CIT should condone the delay in filing the revision petition and decide the correctness of the best judgment assessment order passed by the Assessing Officer on merits. It would appear that written submissions were also filed before the CIT on the merits of the best judgment assessment.

3. By the impugned order dated 17.9.2007, the CIT held that the assessment order was delivered to the authorized representative of the petitioner firm on 9th March, 2004 and even allowing for the pendency of litigation between the partners before the High Court for rendition of partnership accounts and for partition of the family business properties, the delay after February, 2005, when the consent decree was passed by the Court, remained to be explained. He held that the law does not help those who are not vigilant of their rights and that in any case there were no facts or circumstances or events which took place after the sent decree was passed in February, 2005, which can explain the delay in filing the revision petition. He accordingly refused to condone the delay and rejected the revision petition in limine. He did not, therefore, examine the merits of the best judgment assessment. The revision petition was accordingly dismissed.

4. We have considered the facts and circumstances which caused the delay in filing the revision petition before the CIT. We have also considered the rival contentions. The CIT has himself taken the view that the delay up to the passing of the sent decree in February, 2005 can be taken to be explained. The question, therefore, is whether there was any reasonable cause for the delay occasioned beyond the said date. The Id. counsel for the petitioner has strenuously contended that the assessment order dated 28.2.2003 was never served on the petitioner firm or any of its partners and that it was for the first time that the petitioner firm came to know of the passing of the assessment order when the application filed by the income tax department before the Debt Recovery Tribunal came up for hearing on 31.8.2006. We have examined the contention and also the other reasons advanced on behalf of the petitioner for the delay. We find that the partners of the petitioner firm have revoked the authority of the tax consultant by a letter filed before the CIT on 25.5.2007 and thereafter on 26.6.2007, Sh. Narender Kumar, son of one of the partners was authorized to look after and deal with the case. It appears that a revised representation was also filed before the CIT. Earlier the CIT had pointed out to the erstwhile

authorized representative of the petitioner on 12.2.2007 that the revision petition was barred by limitation and that a petition for condonation of the delay should be filed. It also appears that even the fee for filing the revision petition was paid only on 20.2.2007. It would appear from these facts that the service of the assessment order on the authorized representative of the petitioner-firm was not known to it or its partners and that he had acted on his own without keeping the partners of the petitioner-firm informed of the developments. This itself shows that the partners of the petitioner-firm were not in the know of things till they revoked the authority given to the authorized representative by letter filed with the CIT on 25.5.2007. This development shows that none of the partners of the petitioner firm was aware of the assessment order or even the filing of the revision petition before the CIT till at least 25.5.2007. In these circumstances, it may be rather harsh and unfair to attribute any knowledge of the assessment order to the partners of the petitioner firm. This would cover the period after February, 2005 when the consent decree was passed. Having regard to the developments, as briefly narrated above, it seems to us that the partners of the petitioner firm were not aware of the passing of the assessment order or the filing of the condonation application and the revision petition before the CIT. The delay also has to be viewed having regard to the background of litigation between the partners of the petitioner firm, which ultimately resulted in the consent decree. Taking an overall view of the matter we are satisfied that there was sufficient cause for the delay in filing the revision petition before the CIT.

5. It is further seen that in the year 2001, a suit for partition of the family properties had been filed and on 17.5.2001 a commissioner was appointed to take custody of the books of account. The keys remained with the court commissioner and, therefore, the petitioner firm did not have access to the books of account so that they could be produced before the Assessing Officer in the course of the assessment proceedings. The return was filed on 30th October, 2000 but the litigation between the partners started in 2001. Thereafter, the petitioner firm had to face a suit from Standard Chartered Bank in respect of a property in Model Town which was mortgaged with them. On 27.1.2003, the civil court had directed that possession of the property be handed over to the court receiver. The petitioner-firm was diligent enough to send a letter to the Assessing Officer on 7.1.2003 intimating the change of address from Model Town to A-1, Bijlee Apartment, Gujranwala Town-II, Delhi-9. This fact has been acknowledged by the Assessing Officer himself in the assessment order. It cannot therefore be stated that the petitioner firm was negligent or showed lack of diligence. Despite the intimation of the change of address it would appear that the Assessing officer sent the assessment order to the Model Town address, which was in the possession of the court receiver as per orders of the civil court. It was in these circumstances that the assessment order was served on the assessee's authorized representative on 9.3.2004 but by that time the partners of the petitioner firm and their family members were deeply involved in litigation and could have had no knowledge of the receipt of the assessment order by the

authorized representative appointed earlier. When they came to know about this, they revoked the authority of their authorized representative and duly intimated the same to the CIT. The course of events give us the impression that but for the litigation between the partners and their family members, there would not have been any failure to respond to the notices issued by the Assessing Officer in the course of assessment proceedings or any delay in filing the revision petition before the CIT.

6. On the question relating to condonation of delay, in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, the Supreme Court observed that as under:-

"3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner. 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk."

7. In *N. Balakrishnan Vs. M. Krishnamurthy*, the Supreme Court observed as follows:-

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit.

... Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. 12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate."

8. Relying upon its decision in *N. Balakrishnan (supra)*, the Supreme Court, in *Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others*, , again reiterated its view and made the following observations:-

"...There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be

imputed to the defaulting party."

9. Applying the above decisions, we are satisfied that there existed reasonable cause for the delay in filing the revision petition before the CIT u/s 264 of the Act. We condone the delay in filing the revision petition. The order passed by the CIT on 17.9.2007 refusing to condone the delay and adjudicate upon the merits of the revision petition, is hereby quashed and a writ of certiorari is issued. The CIT is directed to take up the revision petition and decide the same on merits in accordant with law after giving due opportunity to the petitioner firm of being heard. Since the dispute relates to the assessment year 2000-01, it is expected that the CIT will dispose of the revision petition on merits expeditiously. The writ petition is accordingly allowed with no order as to costs.