BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 0756/PUN/2024

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Bhujbal Construction Company
Gat No. 12/29, Someshwar Wadi,
Pashan, Haveli, Baner Rd., Pune.
PAN: AAFFB7317L .... *अपीलार्थी / Appellant*

बनाम / V/s

Income Tax Officer,
Ward-2(2)Pune-1. .... *प्रत्यर्थी / Respondent*

द्वारा / Appearances
Assessee by: None for the Assessee
Revenue by: Mr Umesh Phade ['Ld. DR']
सुनवाई की तारीख / Date of conclusive Hearing : 30/07/2024
घोषणा की तारीख / Date of Pronouncement : 01/08/2024

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal is instituted by the assessee against the DIN & Order No. ITBA/APL/S/250/2023-24/1061424190(1) dt. 23/02/2024 passed u/s 250 of Income Tax Act, 1961 [hereinafter 'the Act'] by the learned Addl./Jt. Commissioner of Income Tax Appeals-2, Grurgram [in short 'CIT(A)'] which confirmed the order of assessment passed u/s 143(3) of the Act by the Income Tax Officer Ward-2(2), Pune [in short 'AO'] for the assessment year 2013-14 [hereinafter 'AY']

2. The case was called twice, none appeared at the bequest of the assessee and after finding from records that there was no request for adjournment, with the able assistance from the Revenue, we deem it fit proceed & adjudicate the preliminary issue *ex-parte* u/r 24 of the ITAT-Rules, advanced accordingly.

3. Briefly stated facts of the case are that;

3.1 The assessee a is partnership firm, which filed its return of income [in short 'ITR'] declaring total income of ₹630/- on 13/03/2014. The case of the assessee was subjected to limited scrutiny under CASS System. In the event of assessee's failure to deduct tax at source [in short 'TDS'] from the expenditure of interest ₹20,35,033/- debited to Profit & Loss Account [in short 'P&L'] and credited eight identified persons were disallowed u/s 40(a)(ia) of the Act and the assessment vide order dt. 22/03/2016 was accordingly framed u/s 143(3) of the Act.

3.2 Aggrieved thereby assessee filed an appeal before Ld. CIT(A) on 15/01/2022, which came to be dismissed *in-limine* as barred by limitation. Further aggrieved by impugned order the assessee firm set-up the present appeal on as many as four grounds as laid in appeal memo.

4. At the outset of physical hearing, drawing our attention to orders of tax authorities below the Ld. DR Mr Phade submitted that, the assessee was in receipt of assessment order on the date it was passed, the appeal thereagainst was however filed on 15/01/2022 that is with the delay of almost 2086 days from the expiry of period within which the appeal could have been filed before Ld. CIT(A). Stressing 2086 days delay occurred in instituting the appeal before Ld. CIT(A) and reiterating the contents of para 5 (placed at Pg 3-4/4) the Ld. Phade argued that, the delay of 2086 days is inordinate in first place and was without any sufficient reason. The appeal was neither supported by any application nor an affidavit explaining the sufficient reasons behind such inordinate delay. In the event the Ld. CIT(A) has rightly dismissed the appeal in-limine on the grounds of limitation.

5. The Ld. Mr Phade avowed further that, since the assessee did neither had any sufficient reasons nor it could bring one on record through any petition/affidavit either during the pendency of its appeal before Ld. CIT(A) or even in the present proceedings before the Tribunal therefore in its absence the firm badly lacks from affirming such delay was unintentional and was under bonafied belief. The assessee firm therefore deserves no relief on the ground of limitation. To drive home this contention the Ld. DR has strongly pressed into service the ratio laid in *'Basawaraj & Anr Vs Spl Land Acquisition Officer'* [2014, AIR 746 (SC)] and *'Siva Industries & Holding Ltd. Vs ACIT'* [2024, 153 Taxmann.com 354 (Mad)]

6. Without going into grounds of appeal and merits of the case, we have heard Ld. DR on this limited issue of delay condonation and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on records and considered the relevant facts & circumstance concerning the delay, judicial precedents relied upon.

7. We note that the assessment order u/s 143(3) of the Act was passed on 22/03/2016 & communicated to the appellant on 30/03/2016. In terms of provisions of section 249(2) of the Act, the appeal against order of assessment or penalty order is required to be filed within thirty days from the date the order sought to appealed was received by assessee. In the instant case the appeal against assessment order was admittedly filed before Ld. CIT(A) on 15/01/2022, ostensibly with a delay of 2086(approx.) days from the expiry of statutory period prescribed u/s 249(2) of the Act. The said appeal was since time barred by limitation hence dismissed *in-limine* in the absence of document/explanation establishing sufficient reasons behind occurrence of such inordinate delay.

8. Let us first consider the core principles culled out by the Hon'ble Supreme court in *'Esha Bhattacharjee Vs Managing committee of Raghunathpur Academy and Ors'* reported in 12 SCC 649, which are compelling to be referred herein before we actually vouch the issue of sufficiency of reasons in given facts & circumstances;

> *(a) **Lack of bonafied imputable** to a party seeking condonation of delay is a significant and relevant fact;*
> *(b) The concept of liberal approach has to encapsulate the **conception of reasonableness** and totally unfettered free play is not allowed;*
> *(c) The **conduct, behaviour and attitude of a party** relating to its negligence cannot be given a total go-bye in the name of liberal approach.*
> *(d) If the explanation offered is concocted or grounds urged in the **applications are fanciful**, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation.*
> *(e) It is to be borne in mind that no one gets away with **fraud, misrepresentation or interpolation** by taking recourse to the technicalities of the law of limitation.*
> *(f) An application for condonation of delay should be drafted with **careful concern and not in a haphazard manner** harbouring notion that Courts are required to condone delay on bedrock of principle that adjudication of lis on merits is seminal to justice dispensation system;*
> *(g) The increasing tendency to perceive the **delay as a non- serious matter** and hence **lackadaisical propensity** can be exhibited in a nonchalant manner requires to be curbed, of course, with legal parameters* ***(Emphasis supplied)***

9. From the computation of total delay even if the period of two years i.e. COVID-19 relaxation/exclusion granted by Hon'ble Supreme Court is excluded, the balance delay in instituting appeal before Ld. CIT(A) still continues to be inordinate, substantial & excessive. In the absence of any application/petition and affidavit accompanying corroborative & independent evidence that such inordinate delay in filing appeal before Ld. CIT(A) was occurred for a sufficient cause, it is much less possible for quasi-judicial authority to turn-a-blind-eye and accept the same without evidence. We note that, there is neither a plausible explanation nor any whisper in the entire narration of delay or about a single step taken to showcase the required

seriousness, and not even an affirmation that delay was undeliberate or unintentional. The appellant assessee before both first & second appellate proceedings dejectedly failed to demonstrate that there was 'sufficient cause' or 'sufficient reason' behind the inordinate delay caused in filing the appeal before Ld. CIT(A). It is also on record that, there was no affidavit to establish that the said delay was unintended or undeliberate in any manner. In this circumstance, we see strong reason in countenancing the views canvassed by of the Ld. Mr Phade that, the true length of delay is no matter, the acceptability of explanation is the only criteria as the primary function of quasi-judicial authority is to adjudicate dispute between parties to advance substantial justice. The Hon'ble Supreme Court vide para 15 has summarized the law on the issue on delay condition in "Basawaraj & Anr Vs Special Land Acquisition Officer' [L4 SSC 8U(SC)] as;

> *"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party* ***is found to be negligent****, or for* ***want of bona fide*** *on his part in the facts and circumstances of the case, or found to have* ***not acted diligently*** *or* ***remained inactive****, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was* ***no sufficient cause to prevent a litigant to approach*** *the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature".* ***(Emphasis supplied)***

10. It is the trite law that, the burden is on the party claiming condonation of delay to place before the appellate authority, in clear and explicit terms, all facts on which the party relies, so that the appellate authority/court can come to the conclusion that it is not a case of want of diligence or inaction on the part of the

applicant. In the instant case, admittedly, the assessee has not shown any action or vigilance for a period of more than five years after the assessment order was served upon it. The appellant has not proved any inaction or negligence on the part of a third party, much less have they pleaded any action or vigilance on their own part. Thus, the appellant failed to make out a case that there was sufficient cause for delay in filing the appeal before Ld. CIT(A) and remained negligent and did not initiate any steps at all. Inaction and want of diligence on the part of the appellant/applicant would not entitle it to the benefit of the provisions of section 249(2) of the Act. Therefore, keeping in view the propositions of law laid down by the judicial precedents pressed into service and having regard to the totality of the facts and circumstances of present case as discussed above, in our considered view the appellant is found to be casual, non-serious and non-vigilant in preferring/instituting the appeal before Ld. CIT(A) against the assessment order. In order to avoid injustice to respondent revenue, the impugned order passed by the Ld. CIT(A) dismissing the appeal of the assessee in-limine is upheld.

11. In result, the appeal of the assessee stand **DISMISSED** on above terms.

u/r 34 of ITAT Rules, order pronounced in open court on this Thursday, 01st day of August, 2024

-S/d-	-S/d-
VINAY BHAMORE	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / PUNE; दिनांक / Dated : 01st day of August, 2024

आदेश की प्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.	2. प्रत्यर्थी / The Respondent.	3. The Pr. CIT, Concerned
4. The NFAC / CIT(A) Concerned	5. DR, ITAT, Bench ‘SMC’, Pune	6.गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order
वरिष्ठनिजीसचिव / Sr. Private Secretary
आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.