

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 1143/Chd/2019

निर्धारण वर्ष / Assessment Year : 2013-14

Mrs. Uma Rani Prabhakar, Sood Complex, Opposite Petrol Pump, Circular Road, Tarahall, Shimla (H.P.)	बनाम	The Dy.CIT, Circle-Shimla, Shimla (H.P.)
स्थायी लेखा सं./PAN NO: ABGPP 0501 Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rishabh Marwaha, C.A. &
Shri Sudhir Sehgal (Adv)

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl.CIT-DR

सुनवाई की तारीख/Date of Hearing : 03/05/2021

उदघोषणा की तारीख/Date of Pronouncement : 03/05/2021

आदेश/Order

PER: N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), Shimla, H.P. dated 28/12/2018.

2. The Registry has pointed out that the appeal is barred by limitation by 165 days.
3. The Assessee moved an application for condonation of delay stating therein as under:

"1. That the applicant is filing an appeal against the order dated 28/12/2018 passed by the Ld. Appellate Authority below, thereby confirming the penalty imposed by the Assessing Officer by way of order dated 29/08/2016.

2. That an assessment order was passed against the applicant on dated 29/02/2016 u/s 143(3) of the Act, in pursuance to the same penalty proceeding u/s 271(l)(c) was initiated and an order dated 29/08/2016 was passed u/s 271(l)(c) of the Act, thereby imposing a penalty of Rs. 3,48,590/- . Against the said order dated 29/08/2016, an appeal was filed on dated 28/09/2016.

3. *That the case of the applicant was opened in revision u/s 263 of the Act and an order dated 13/03/2018 was passed u/s 263 of the Act, thereby re-opening the case for fresh assessment and the earlier assessment order dated 29/02/2016 was set aside. The said order dated 13/03/2018 is challenged by the applicant before this Hon'ble Tribunal and the same is pending adjudication.*
 4. *That an order dated 30/11/2018 was passed u/s 143(3) r.w.s. 263 of the Act, thereby also initiating penalty proceedings u/s 271(l)(c). The said order dated 30/11/2018 was challenged by the applicant before Ld. CIT(A), Shimla and the same is pending for adjudication.*
 5. *That the First Appellate Authority below confirmed the order dated 29/08/2016 imposing penalty by way of the impugned order dated 28/12/2018. The applicant filed an application dated 08/01/2019 to rectify the impugned order dated 28/12/2018 on the ground that the order dated 29/08/2016 was quashed by the revisional authority by way of order dated 13/03/2018 passed u/s 263 of the Act, which was not disposed off till date.*
 6. *That the applicant did not file an appeal against the order 28/12/2018 within the stipulated time period, as the application dated 08/01/2019 was not disposed off by the Ld. Appellate Authority below. Therefore it is humbly submitted that the delay in filing the present appeal is neither willful nor intentional, but due to the reason that the applicant was waiting his application dated 08/01/2019 to be disposed off. So that in view of the submissions made the delay in filing the present appeal may kindly be condoned in the interest of justice."*
4. During the course of hearing the Ld. Counsel for the Assessee reiterated the contents of the aforesaid application and stated that the delay in filing the appeal was beyond the control of the assessee and there was no malafide intention, therefore, the delay in filing the appeal may be condoned.
5. In his rival submissions the Ld. DR although opposed the condonation of delay but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.
6. After considering the submissions of both the parties and the material available on the record, it appears that the delay in filing the appeal was beyond the control of the assessee and there was no malafide intention, and moreover the assessee wants to avail the immunity scheme i.e.; Vivad se Vishwas, therefore the delay is condoned and appeal is admitted.
7. The Assessee has furnished an application for withdrawal of this appeal stating therein as under:

"I had filed appeal before your kind self vide appeal No. ITA 1143/Chandi/2019 on 16/08/2019 against the order passed by CIT(Appeal), Shimla vide Appeal No. IT/95/161-17/SML on 28/12/2018. I have opted for Vivad Se Vishwas Scheme 2020 and Form No. 3 has been issued to me by PCIT Chandigarh against the disputed demand. Copy of form No. 3 is being enclosed here with for your kind perusal. The appeal filed vide ack No. ITA1143/Chandi/2019 dated 16/08/2019 may kindly ne treated as withdrawn in pursuance to form No. 3 issued by the PCIT, Chandigarh on 16/04/2021 and certificate to the effect that appeal has been withdrawn may kindly be issued to undersigned so that form No. 4 may kindly be filed under the Vivad Se Vishwas Scheme 2020.

Thanking you.

Yours faithfully

Sd/-
(Uma Rani Prabhakar")

8. During the course of hearing the Ld. Counsel for the Assessee submitted that since the assessee has availed the immunity scheme i.e. Vivad Se Vishwas and the Income Tax Department has issued Form No. 3 bearing Certificate No.342085460160421 in response to the application filed by the assessee, under section 5(1) of the Direct Tax Vivad se Vishwas Act, 2020, therefore the appeal of the assessee may be allowed to be withdrawn.

9. The Ld. DR did not object if appeal of the assessee is dismissed as withdrawn.

10. In view of the above the appeal of the assessee is dismissed as withdrawn.

11. In the result, appeal of the assessee is dismissed.

(Order pronounced in the open Court on 03/05/2021)

Sd/-
आर.एल. नेगी
(R.L. NEGI)
न्यायिक सदस्य/ Judicial Member
***Ranjan**
Date: 03/05/2021

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File