

CIT rightly dismissed revision petition as assessee didn't specify why assessment order required interference

Summary – The High Court of Gujarat in a recent case of Jayantilal Pravinkumar No Co., (the Assessee) held that CIT rightly dismissed revision petition as assessee did not specify why assessment order required interference

Facts

- The assessee was a partnership firm engaged in the business of providing Angadia service. A search was carried out by Enforcement Directorate under section 37 of the Foreign Exchange Management Act, 1999, in the luggage van of Aashram Express which resulted into seizure of cash, bullion and jewellery being carried by various angadias including the assessee.
- The assessee was thereupon subjected to proceedings under section 158BD. In response to the notice, the assessee filed the 'Nil' return. However, during the course of assessment, the assessee offered an amount of Rs.15.50 lakhs by way of income, requesting the authority that the tax on such undisclosed income be adjusted against the seized cash of the assessee.
- The Assessing Officer accepted the assessee's concession of undisclosed income of Rs.15.50 lakhs and taxed the same at 60 per cent demanding basic tax of Rs.9.30 lakhs. He added surcharge at the rate of 2 per cent.
- Against the order of assessment, the assessee initially preferred appeal before the Appellate Commissioner, confining the appeal to levy of surcharge. The Commissioner (Appeals), dismissed the appeal observing that no submissions were made in support of challenge to imposition of surcharge. There was no infirmity in the order of assessment. Against said order, the assessee preferred further appeal before the Tribunal which was subsequently withdrawn.
- Thereafter, the assessee filed a revision petition before the Commissioner under section 264 challenging the addition of Rs. 15.50 lakhs and corresponding tax imposed by the Assessing Officer in the order of Assessment. The assessee contended that this issue was not subject matter of appeal before the Appellate Commissioner or the Tribunal. The revision petition *qua* this issue was therefore, maintainable.
- Regarding the merits of the case, the assessee contended that merely because certain income was offered to tax it would not permit the Assessing Officer to tax the same, if otherwise not taxable in law.
- The Commissioner rejected the revision petition on two grounds. He was of the opinion that the delay was not properly explained and further that the order of assessment was already made subject matter of appeal before the Commissioner (Appeals) and the Tribunal.
- On writ:

Held

- From the record, it emerges that the revision petition was filed late by nearly three years and seven months, beyond the period of limitation. Such considerable delay therefore had to be properly explained. In order to do so, the assessee, contended before the Commissioner that it held a *bona fide* belief that its appeal before the Tribunal was maintainable and was hopeful of succeeding in such appeal before the Tribunal on merits. To explain the delay, even after withdrawal of appeal before the Tribunal, the assessee contended that the same occasioned on account of requirement of collection of documents and records.
- This explanation was wholly insufficient. If the contention of the assessee is that the question of quantum addition was not part of appeal proceedings before the Commissioner and the Tribunal, the assessee had no reason to wait for the outcome of such proceedings. Its contention that it was under a *bona fide* belief that it would succeed in such proceedings, is therefore, not in consonance with its averment that such issue never formed part of the subject matter of the appeal proceedings. On the other hand, if the assessee was following the appeal route as is contended while explaining the delay, there was no reason why such appeal should have been withdrawn.
- Further, even after withdrawal of the appeal from the Tribunal, the assessee filed the revision petition nearly 10 months later. This further period of delay is nowhere explained except for the assessee stating in general that it required to collect documents and orders. The Commissioner was therefore justified in not condoning the delay.
- The question of maintainability of the revision petition before the Commissioner is a contentious issue. In the revision petition, the assessee had stated virtually no grounds why the order of assessment on the question of quantum additions required interference. As noted, the assessee gave a written concession that a certain sum be added by way of undisclosed income. To resile from this concession, all that the assessee stated in the revision petition was that such concession was made to buy peace and at the relevant time, required evidence could not be located and submitted.
- Nothing is brought on record to suggest what such relevant evidence the assessee now has, on the basis of which, such concession could be withdrawn. The assessee however, submitted that the maintainability of the revision petition be examined and the merits be left open for the Commissioner to judge. In a writ petition, where one is considering grant of discretionary relief, one can refuse to be bound down by the plain parameters of the order under challenge. When court found that even if the revision petition was maintainable, the assessee had raised virtually no acceptable grounds for setting aside the order of assessment, there is no need to remand the proceedings to the Commissioner to complete an empty formality.