

ITAT condoned delay in filing appeal as assessee was fighting against his CA who filed false ITR

Summary – The Jaipur ITAT in a recent case of Nitesh Agarwal, (the Assessee) held that where explanation offered by assessee that cause of delay in filing appeal was due to turbulent time in family as well as with his earlier C.A., who had mischievously prepared accounts and also filed return of income in his own signatures without assessee's knowledge was found to be bona fide, delay of 387 days in filing appeal was to be condoned

Facts

- The assessee is an individual and received impugned order of Commissioner(Appeals), dated 13-2-2017 on 18-3-2017.
- The assessee filed appeal against above order; however, there was inordinate delay of 387 days in filing appeal. Hence, revenue raised serious objections against maintainability of appeal.

Held

- The assessee has explained the reasons for delay as attributable to the various problems on the business front, family front as well as the assessee was having some dispute with his C.A. In support of his explanation, the assessee has filed the record regarding the complaint against the C.A.. The assessee has also filed a complaint under sections 420, 367, 468 and 471 of the IPC before the Additional Chief Metropolitan Magistrate, Jaipur. A copy of these records have been filed along with the application for condonation of delay. Thus, there is no denial that the assessee has been fighting with his C.A. regarding manipulation of the accounts and filing false/wrong return of income without the knowledge and signature of the assessee. Though, these allegations are subject matter of the proceedings pending before the court, however, the fact which is undisputed that the assessee has been prosecuting the matter of complaint against the C.A. before the various authorities including the Court of Additional Chief Metropolitan Magistrate, Jaipur. The assessee has also filed the record of the exports made to Shree Gems INC, 22 West, 48th Street Suite No. 1203, New York Ny 10036 USA. The assessee has also placed on record the travel documents showing the visit of the assessee to the USA as well as the documents of export, shipping bills, clearance of cargo etc. Thus, these explanations and reasons of delay are based on true facts which are substantiated by the documentary evidence. Further the assessee has also filed the medical record of ailment of his father suffering from cancer. The father of the assessee has been undergoing the cancer treatment since the year 2012. The medical record of treatment from Breach Candy Hospital, Mumbai shows that the assessee's father is being treated from Breach Candy Hospital. Thus, the reasons explained by the assessee are found to be true and therefore, these are bona fide explanation and not mala fide. It is settled proposition of law that the court should take lenient view on the matter of

condonation of delay provided the explanation and reasons for delay is bona fide and not merely a device to cover an ulterior purpose or an attempt to save limitation in an underhand way. While construing the sufficient cause, a liberal view should be taken and court should lean in favour of the party as explained the reasons for delay as bona fide. Whenever substantial justice and technical considerations are opposed to each other, cause of substantial justice has to be preferred. On the facts and reasons explained by the assessee, it is evident that the assessee was prevented from filing the appeal within the period of limitation. The reasons as explained in the application for condonation of delay are duly supported by documentary evidence, therefore, there is nothing on record to suggest that the assessee has taken any advantage in filing the instant appeal belatedly. Thus, once the assessee explained the cause of delay which is found as bona fide and not a device to cover an ulterior purpose then the length of delay itself cannot be a reason for denying the condonation. Thus, when the assessee was passing through a bad phase for such a long time on business front as well as on family front and facing the problem even with the CA and fighting for getting his account set right. Then in the facts and circumstances of the case and in the interest of justice, the delay of 387 days in filing the instant appeal is condoned.

- In the result, the condonation of delay is allowed.