

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 288 of 2015

Date of Decision: 31.10.2015

M/s Avtar Singh Construction Company (P) Ltd., Chandigarh
....Appellant.

Versus

Commissioner of Income Tax, Chandigarh and others
...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

PRESENT: Mr. Vishal Gupta, Advocate for the appellant.

Ms. Urvashi Dhugga, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 31.10.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1240/CHD/2012 for the assessment year 2007-08, claiming the following substantial questions of law:-

- i) Whether the Tribunal erred on facts and in law in dismissing the appeal of the appellant on the ground that the same is time barred and no

reasonable or sufficient cause has been shown in filing the appeal?

- ii) Whether the Tribunal was justified in dismissing the appeals of the assessee on the ground of delay of 105 days in filing the appeal when the same has been duly explained by the assessee by filing the affidavit of the Managing Director in which medical grounds have been duly mentioned for condoning the delay?

2. A few relevant facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the work of sub-contractor under the principal contractor of M/s JMC Project India Ltd. and M/s AFCON Infrastructure Ltd. and filed its original return on 29.3.2008 for the assessment year 2007-08 declaring nil income. The said return was processed under Section 143(1) of the Act. The case of the assessee was selected for scrutiny under CASS and notice under Section 143(2) of the Act was issued on 13.8.2008. The Assessing Officer calculated the income of the assessee from business and other sources and passed the assessment order dated 30.12.2009 (Annexure A-1). Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 21.5.2012 (Annexure A-2) upheld the order of the Assessing Officer and dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. However, the appeal filed was barred by 105 days. The Tribunal vide order dated 31.10.2014 (Annexure A-3) dismissed the appeal being time barred holding that the assessee had failed to explain that the delay was due to reasonable or

sufficient cause. Hence, the present appeal.

4. We have heard learned counsel for the parties.

5. Against the order dated 31.10.2014 (Annexure A-3) passed by the Tribunal, two appeals bearing ITA Nos. 215 and 288 of 2015 have been filed in this Court by the assessee. One appeal, i.e. ITA No. 215 of 2015 has been decided by this Court vide order dated 6.8.2015 wherein the impugned order passed by the Tribunal has been set aside and after condoning the identical delay of 105 days in filing the appeal before the Tribunal, the matter has been remanded to the Tribunal to decide the appeal on merits.

6. In view of the above, the present appeal is allowed and the impugned order dated 31.10.2014 (Annexure A-3) passed by the Tribunal is set aside and the matter is remitted to the Tribunal to decide the same on merits in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

October 31, 2015
gbs

(SHEKHER DHAWAN)
JUDGE