

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1672 of 2008

With

TAX APPEAL No. 1673 of 2008

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B NANJI FINANCE LTD - Appellant

Versus

ASSISTANT COMMISSIONER OF INCOME TAX - Opponent

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Appearance :

MR MANISH J SHAH for Appellant.

MR M R BHATT, Senior Standing Counsel with MRS MAUNA M BHATT for Opponent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

and

HONOURABLE MR.JUSTICE RAJESH H.SHUKLA

Date : 23/12/2009

COMMON ORAL ORDER

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant assessee has filed these two Tax Appeals under Section 260A of the Income-tax Act, 1961 for assessment years 1977 - 78 proposing to formulate the following substantial question of law for determination and consideration of this Court :-
 - I. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the C.I.T. (Appeals) was right in not condoning the delay in filing the appeal?

2. The question of law proposed is same in both the years as the learned CIT (Appeals) has dismissed the appeals of the appellant on the ground of appeals being filed beyond the period of limitation.
3. This Court has issued notice on 28.08.2009 and presumably, it is for final disposal of the appeals. Hence, these matters are taken up for final hearing.
4. Tax Appeal No.1672 of 2008 is in respect of quantum whereas Tax Appeal No.1673 of 2008 is in respect of penalty. So far as the quantum appeal is concerned, delay is of 4 months whereas penalty appeal is concerned, delay is only of one month.
5. We have heard Mr. Manish J. Shah, learned advocate appearing for the appellant and Mr. M. R. Bhatt, learned Senior Standing Counsel appearing for the Revenue. We have also perused the order passed by learned CIT (Appeals) as well as the Tribunal. Though the learned CIT (Appeals) as well as the Tribunal have passed detailed order as to why delay should not be condoned, we are of the view that looking to the facts and circumstances of the case and considering the illness of the partners of the appellant Firms, delay should have been condoned by the learned CIT (Appeals) or in any case the order of the learned CIT (Appeals) should have been reversed by the Tribunal and directions should have been issued to the learned CIT (Appeals) to decide the appeals on merits. It is settled principle of law that the appeal should not be thrown at the very threshold by solely resorting to technicalities. The aggrieved party should be given ample opportunity to get its case decided on merits.

6. Keeping the above celebrated principles of law and looking to the peculiar facts of the case, we answer the question referred to us in negative i.e. in favour of the assessee and against the revenue and quash and set aside the orders passed by the Tribunal as well as learned CIT (Appeals) and direct the learned CIT (Appeals) to decide both the appeals on merits after hearing the assessee and after providing an adequate opportunity of being heard.
7. With this direction and observation, both these tax appeals are accordingly disposed of.

Sd/-

[K. A. PUJ, J.]

Sd/-

[RAJESH H. SHUKLA, J.]