

Assessee is not liable to suffer due to fraudulent and negligent conduct of CA

The Hon'ble Calcutta High Court in the case of *Jayshree Bhardwah v. Deputy Commissioner of Revenue W.B. State Tax & Ors. [WPA 1504 of 2023 dated August 7, 2023]* allowed the writ petition and held that the Petitioner's appeal was dismissed by the Revenue Department on the ground of limitation wherein the delay has been caused due to the conduct of Chartered Accountant, should be reconsidered and be decided on merits.

Facts:

Jayshree Bhardwah ("**the Petitioner**") is the proprietor of the business operating under the name and style of Annapurna Caterer. The Petitioner entrusted the CA with the book of accounts, income tax, GST, and GST Registration with respect to the business and continued to hand over the cash and make payments of tax or any other financial expenses through bank transfer in favour of the Chartered Accountant ("**the CA**"). When the Petitioner visited the branch of the bank in which the current account of the Petitioner firm was being operated, the concerned bank officials informed the Petitioner that the account was blocked by the Revenue Department ("**the Respondent**") for recovery of the liability towards payment of GST. The Petitioner also found that the registered address, phone number and e-mail ID given to the authority were of CA only, not of the Petitioner. The Petitioner also made several attempts to contact the CA, but the efforts made by the Petitioner went in vain. Later, it came to the knowledge of the Petitioner that the said CA had cheated many clients including the Petitioner and was absconding.

The Petitioner, upon meeting the concerned authorities of the Respondent, came to know that, the Respondent has raised a demand pertaining to the period of FY 2018-2019, the amount of which was not deposited by the CA.

The Respondent vide order dated January 17, 2022 (“**the Order**”) directed the Petitioner to pay tax along with interest and penalty of INR 7,46,386/-. The Petitioner filed an appeal against the Order along with the application under Section 5 of the Limitation Act, 1963 for condonation of delay.

The Respondent Joint Commissioner vide Order dated June 27, 2023 (“**the Impugned Order**”) dismissed the appeal filed by the Petitioner solely on the grounds of limitation.

Aggrieved by the Impugned Order, the Petitioner filed a writ petition before the Hon’ble Calcutta High Court submitting that the Petitioner may be granted an opportunity of hearing before the Respondent Appellate Authority and appeal be considered on merits. The Petitioner relying upon the judgement of the Hon’ble Supreme Court in the case of **Rafiq & Anr. v. Munshilal & Anr. 1981 (4) TMI 255**, contended that the Petitioner should not be made to suffer due to laches caused because of the conduct of the CA.

Issue:

Whether the Assessee is liable to suffer due to the fraudulent and negligent conduct of the CA?

Held:

The Hon’ble Calcutta High Court in the case of **WPA No. 1504 of 2023** held as under:

- Relying upon the judgement in the case of **Rafiq & Anr. v. Munshilal & Anr. 1981 (4) TMI 255**, the Supreme Court has observed in no uncertain terms that a person who selects his advocate, briefs him, pays the fees demanded by him and then trusts him to do the rest of the things, such an innocent party could not suffer injustice merely because his chosen advocate defaulted.
- Opined that, the Petitioner is entitled to a hearing by the Respondent authority on merits before the final disposal of appeal.

- Held that, the Impugned Order dismissing the appeal on the ground of limitation is set aside.
- Directed that, the Respondent authority should reconsider the appeal filed by the Petitioner on merits and afford reasonable opportunity to the Petitioner and pass a reasoned order within one month from the date of communication of the order, in accordance with law.

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.