

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

BEFORE SHRI.NARENDRA KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A. No.2422 & 2423/Mum/2023
(Assessment year : 2012-13)

General Lifescience Distributors
1701, Tivoli Building, Hiranandani
Gardens, Powai, Mumbai-400 076

PAN : AAICG21419N

APPLICANT

vs Commissioner of Income-tax
(Appeals)-54, Mumbai

RESPONDENT

Present for the Assessee Shri Devendra Jain
Present for the Department Shri Harshad S. Vengurkar (CIT-DR)
& V.K. Chaturvedi Sr.AR

Date of hearing 15/11/2023
Date of pronouncement 22/11/2023

ORDER

Per N.K. Choudhry (JM):

These appeals have been preferred by the Assessee against the orders both dated 11/05/2023 impugned herein passed by the Ld. Commissioner of Income-tax (in short, Ld. Commissioner) under section 250 of the Income-tax Act, 1961 (in short, the Act) for the A.Y.2012-13, whereby the Ld. Commissioner upheld the Assessment order dated 27/12/2019 passed under section 144 read with section 147 of the Act as well as the penalty order dated 21/09/2021 passed under section 271(1)(c) of the Act, respectively.

2. First we are inclined to decide appeal i.e. **ITA No.2423/Mum/2023** as a lead case which pertains to confirmation of assessment order. At the outset, we observe that assessment order dated 27/12/2019 under section 144 read with section 147 of the Act was passed, against which the Assessee though preferred its appeal by e-filing, mode on 21/12/2022, however, inspite of affording various opportunities of being heard by the Ld. Commissioner, neither appeared nor substantiated the delay of approximately 33 months in filing the appeal before the Ld. Commissioner. Therefore, the Ld. Commissioner in the constrained circumstances and in the absence of substantive material and / or reasonable cause, which the Assessee has failed to establish, dismissed the appeal of the Assessee in limine on the point of limitation. The Assessee being aggrieved, is in appeal before us.

3. The Ld.AR of the Assessee by filing certain documents, which pertains to the director of the company such as order dated 30th April, 2018 issued by the Crown Court at Central Criminal Court and affidavit dated 10th November, 2023, tried to substantiate the delay in filling the appeal before the Ld. Commissioner. Contents of the affidavit are reproduced below for clarity and brevity and for ready reference:-

"AFFIDAVIT

I, Jacob Sporon Fielder, having residential address at Apt. 1701, Tivoli Building, Hiranandani Gardens, Powai, Mumbai - 400076, do hereby state and declare on solemn affirmation as follows:

- 1. That I am a Danish National having residential address in India at Apt. 1701, Tivoli Building, Hiranandani Gardens, Powai, Mumbai- 76*
- 2. That I was residing in India from 2005 to 2018.*

3. That I was the erstwhile shareholder and ex-director in the company by the name and style General Lifescience Distributors Gmbh, incorporated in Seychelles bearing Registration Number 046004 having address at Suite 9, Ansuya Estate, Revolution Avenue, Victoria, Mane, Seychelles.

4. That the said company General Lifescience Distributors Gmbh has now been struck off w.e.f 01.01.2017.

5. That apart from the aforesaid company, I was a director in certain other entities incorporated in various jurisdictions including India, running multiple businesses.

6. That while in operation, the company General Lifescience Distributors Gmbh was involved in the business of import and export of pharmaceutical products.

7. That the said company had no fixed place of business in India and was not holding a Permanent Account Number in India being a foreign company.

8. That I was detained in the jurisdiction of United Kingdom from March 2018 to October 2021.

9. That on expiry of the detention in the United Kingdom, I returned dia somewhere in the month of October 2021.

10. That on my return to India post the detention period, I realized that there have been proceedings initiated against the said company General Lifescience Distributors Gmbh.

11. That reassessment proceedings were initiated and an ex-parte order was passed on 27.12.2019 under section 144 r.w.s. 147 of the Income-tax Act, 1961

(Act), thereby completing the assessment and making an addition of Rs 8,32,24,480 to the total income of the said company.

12. That thereafter, penalty proceedings were also initiated under various provisions of the Income tax Act against the said company.

13. I tried to file an appeal against the said ex-parte order but the same could not be filed due to technical shortcomings and nonavailability of a Director.

14. That I filed an appeal manually before the income tax authorities along with a letter to condone the delay in filing the appeal.

15. That during the period of detention, I was having no access to telephone or internet and therefore could not manage the business activities and comply with statutory notices. Multiple proceedings had been initiated against me in the interim under various laws for the time being in force.

16. That on my return to India, it took some time to take stock of various proceedings and the legal remedies to be pursued.

17. That thereafter, an appeal was filed electronically on 22.12.2022 along with an application to condone the delay due to the aforesaid reasons.

18. Hence, this affidavit is being made in support of my application to condone the delay in filing of appeal before the Commissioner of Income tax(Appeals) under section 246A of the Income—tax Act, 1961

Whatever is stated hereinabove is true to the best of my knowledge, information and belief.

Solemnly affirmed at Mumbai this 10th day of November, 2023

Sd/-
Jacob Spoon Fielder
(Deponent)

Before Me.

Sd/-
R.A. ALATE B.SC.LL.B.
NOTARY GRATETR MUMBER
1/B-7, Dongre Sadan, Mohill Village,
Sakinaka, Mumbai-400 072 “

4. The Assessee, on the basis of aforesaid facts as stated in the affidavit mainly claimed that its director, Mr. Jacob Sporon Fielder, who was mainly operating the business of the Assessee company was in fact detained by the Police in the jurisdiction of United Kingdom from March, 2018 to October, 2021 and on expiry of detention in the United Kingdom, he returned to India, somewhere in the month of October, 2021 and after returning he realized that there have been proceedings initiated by the revenue department against the Assessee, which resulted into passing of an ex-parte assessment dated 27/12/2019 under section 144 r.w.s. 147 of the Act against which though the appeal was filed by the wife of the Assessee in manual form; however, the same was not entertainable. Therefore, the Assessee, in order to regularize the appeal filed manually, filed an appeal on-line in the income-tax portal on 21/12/2022 along with an application for condonation of delay in filing the appeal on-line. As the Assessee company is no longer in existence, and, therefore, asked erstwhile shareholder/Director Mr.Jacob Sporon Fielder to sign the instant appeal as Mr. Jacob Sporon Fielder, had no access to telephone or internet and, therefore, could not manage the business activities and comply with the statutory notices, which resulted into initiation of multiple proceedings against him under various laws. However, on return to India in October,

2021, it took some time to take stock of various proceedings and the legal remedies to be pursued. Thereafter the appeal was filed electronically on 22/12/2022 along with an application for condonation of delay. Hence, considering peculiar facts and circumstances of the case, the delay occurred before the Ld. Commissioner may be condoned by imposing any condition including reasonable cost etc., which the Assessee undertakes to comply with.

Considering the peculiar facts and circumstances as the Assessee's main Director/shareholder Mr. Jacob Sporon Fielder, who was operating the Assessee company, in fact, was entangled in various litigations including detention in the jurisdiction of United Kingdom from March, 2018 to October, 2021 and, therefore, could not pursue the assessment proceedings, which resulted into passing the assessment order dated 27/12/2019 as ex-parte under section 144 read with section 147 of the Act. As the director, Mr. Jacob Sporon Fielder was in detention during the year 2019, 2020 & 2021 upto October, therefore, could not file the appeal before the Ld. Commissioner upto October, 2021. Further, after coming to India, took stock of the various proceedings and started pursuing the legal remedies and consequently on 22/12/2022 filed the appeal electronically before the Ld. Commissioner. Though there is gap of one year as the Assessee's director returned back to India in the month of October, 2021, but the appeal was filed only on 22/12/2022, therefore, the Assessee through tried to demonstrate the reasons for not filing the appeal in time before the Ld. Commissioner, however, something is lacking in the said claim of the Assessee, as the gap of one year is not convincing. However, if one consider the facts and circumstances in its entirety, then the claim of the Assessee seems to be genuine which requires lenient view; hence we, by considering the peculiar facts and circumstances as the assessment order dated

27/12/2019 was passed as ex-parte U/s 144 read with section 147 of the Act and thereafter from March 2020 onwards Covid-19 period was started and the Hon'ble Apex Court excluded the period from March 15, 2020 to February 28, 2022 while computing the period of limitation for filing of any suit, appeal, application, or proceeding ; Ld. Commissioner decided the appeal filed by the Assessee in limine but not on merit; even otherwise no prejudice shall be caused to the Revenue Department if the case is directed to be decided on merit; substantial justice also demands that proper adjudication of the case is required to be done; hence, we are inclined to set aside the ex-parte order passed by the Ld. Commissioner and consequently, remanding the instant case to the file of the Ld. Commissioner or decision on merit, but subject to deposit of Rs.51,000/- in the Prime Minister's National Relief Fund (PMNRF) within 30 days of receipt of this order. Suffice to say, the Ld. CIT(A) shall afford reasonable opportunity to the Assessee and in case of further default, the Assessee shall not be entitled for any leniency.

5. Coming to **ITA No.2422/Mum/2023**, which pertains to imposition of penalty on the basis of the assessment order dated 27/12/2019 passed under section 144 read with section 147 of the Act, against which the appeal filed by the Assessee was dismissed by the Ld. Commissioner as ex-parte, as we have already set aside the order passed by the Ld. Commissioner in quantum appeal and remanded the case to the file of the Ld. Commissioner for decision afresh, hence, impugned order in this case also set aside and case is remanded in the same terms to the file of the Ld. Commissioner but subject to deposit of Rs.51,000/- in the Prime Minister's National Relief Fund (PMNRF) within 30 days of receipt of this order. Suffice to say, the Ld. CIT(A) shall afford reasonable opportunity to the Assessee and in case of further default, the Assessee shall not be entitled for any leniency.

6. In the result, both the appeals filed by the Assessee stands allowed in the enumerated terms, for statistical purposes.

Order pronounced in the open court on 22/11/2023.

Sd/-

sd/-

(GAGAN GOYAL)	(NARENDRA KUMAR CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private
Secretary

ITAT, Mumbai