

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC' AT KOLKATA
[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE-PRESIDENT (KZ)]

[THROUGH VIRTUAL COURT]

I.T.A. No. 358/Kol/2021

Assessment Year: 2017-18

Aditya Vikram Roy Chowdhury.....*Appellant*
15B, Mandeville Gardens,
Charuvila, Ballygunge,
Kolkata - 700 019.
[PAN: AJWPR 7809 M]

Vs

ITO, Ward - 1(1), Kolkata.....*Respondent*

Appearances by:

None appearing on behalf of the Assessee

Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue:

Date of concluding the hearing : November 11, 2021

Date of pronouncing the order : December 08, 2021

ORDER

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre dated 15.09.2021 whereby he dismissed the appeal of the assessee by treating the same as barred by limitation.

2. The assessee in the present case is an individual who filed his return of income for the year under consideration on 27.07.2017 declaring a total income of Rs. 11,55,598/-. In the said return, the Short Term Capital Loss related to A.Y. 2009-10 amounting to Rs. 4,28,184/- was set off by the assessee against the Short Term Capital Gain of Rs. 4,28,184/- shown for the year under consideration. In the intimation issued u/s 143(1) of the Act on 30.08.2018, Dy. CIT, CPC, Bangalore however did not allow the claim of the assessee for set off brought forward Short Term Capital Loss pertaining to A.Y. 2009-10 against the

Short Term Capital Gain earned during the year under consideration and determined the total income of the assessee chargeable to tax at Rs. 15,95,880/-.

3. Against the order u/s 143(1) by the AO, an appeal was preferred by the assessee before the Ld. CIT(A) with the delay of nine months. The said delay was sought to be condoned by the assessee on the ground that an application u/s 154 was filed by him seeking rectification of the intimation issued by the AO u/s 143(1) of the Act and since the said application remained to be disposed of by the AO, appeal was finally preferred by him before the Ld. CIT(A) against the intimation issued u/s 143(1). According to the Ld. CIT(A), this reason given by the AO did not constitute the sufficient cause and accordingly he rejected the application for condonation of delay for filing the appeal and dismissed the said appeal at the threshold as barred by limitation vide his appellate order dated 15.09.2021. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. At the time of hearing before the Tribunal, none has appeared on behalf of the assessee. This appeal of the assessee is, therefore, being disposed of ex-parte qua the assessee after hearing the arguments of the Ld. CIT(A) and perusing the relevant material available on record. It is observed that there was a delay of nine months on the part of the assessee in filing the appeal before the Ld. CIT(A) against the order passed by the AO u/s 143(1) and the same was explained by the assessee by submitting that an application u/s 154 was moved by him for rectification of order u/s 143(1) of the AO and since the same was not disposed of by the AO and remained pending for long time, the

assessee preferred an appeal against the order u/s 143(1) before the Ld. CIT(A) resulting in a delay of nine months. The Ld. CIT(A) however did not construe this reason given by the assessee as sufficient cause and dismissed the appeal of the assessee by treating the same as barred by limitation.

5. It is well settled that the term “sufficient cause” is to be construed liberally in order to advance the substantial cause of justice and not to shut the door on the assessee to avail the remedial measure provided under the statute. When the claim of the assessee for set off for brought forward Short Term Capital Loss of the earlier years against the Short Term Capital Gain of the year under consideration was disallowed by the AO vide an order u/s 143(1), two remedies were available to the assessee i.e. to move the application u/s 154 for rectification before the AO or to file an appeal before the Ld. CIT(A). In the present case, the assessee availed the first remedy by filing an application u/s 154 before the AO and since no relief was forthcoming by availing the said remedy in as much as the application filed u/s 154 remained to be disposed of by the AO, the assessee after waiting for a reasonable time availed the second remedy which was available by filing the appeal before the Ld. CIT(A). In these circumstances of the case, I am of the view that the assessee cannot be said to have not acted diligently and is guilty of negligence. In my opinion, the delay of nine months in filing the appeal before the Ld. CIT(A) was a result of the fair and reasonable attempt made by the assessee to avail one remedy available to him by filing an application u/s 154 for rectification before the AO and the same, in my opinion, constituted a reasonable cause. I, therefore, condone the delay of nine months on the part of the assessee in filing an appeal before the

Ld. CIT(A) and setting aside the impugned order passed by the Ld. CIT(A), I remit the matter back to him for disposing of the appeal of the assessee afresh on merit in accordance with law after giving a proper and sufficient opportunity of being heard to the assessee.

6. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 8th December, 2021.

Sd/-
(P.M. JAGTAP)
VICE-PRESIDENT

Dated: 08/12/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. Aditya Vikram Roy Chowdhury, 15B, Mandeville Gardens, Charuvila, Ballygunge, Kolkata – 700 019.
2. ITO, Ward – 1(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. Private Secretary/DDO
ITAT Kolkata Benches, Kolkata