

**IN THE INCOME TAX APPELLATE TRIBUNAL,
“B” BENCH
MUMBAI**

**BEFORE: SHRI BASKARAN BR, ACCOUNTANT MEMBER&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1343/MUM/2022& 1344/MUM/2022
(A. Y.:2015-16)**

Shobha Arun Parmar 601, Dunhil Arch 24 Happy Home Society, Nehru Road, Vile Parle, East, Mumbai-400 057	Vs.	Income Tax Officer 25 (3) (1), Kautilya Bhavan, C-41 to C-43, G Block BKC, Bandra East, Mumbai-400 051
Pan No.AGFPP2164D		
Appellant		Respondent

Appellant by	Shri.Dilip P. Bapat.AR
Respondent by	Shri.Chetan M.Kacha.DR

Date of Hearing	22.09.2022
Date of Pronouncement	29.09.2022

ORDER

PER PAVAN KUMAR GADALE, JM:

These are the two appeals filed by the assessee against the order of Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC). The both appeals are relating to same assessment year and ITA No.1344/M/2022 is against Order u/sec154 and 250 of

the Act and whereas, ITA No.1343/M/2022 is against the order under Section 143(3) and 250 of the Act.

Since, both the appeals have similar and identical issues hence, they are clubbed, heard and consolidated order is passed. We shall take up the appeal ITA No.1343/M/2022 and the facts narrated therein.

The assessee has raised the following grounds of appeal.

1. *The learned Commissioner of Income Tax (Appeals) has erred in rejecting the prayer for condonation of delay in the presentation of appeal within the time prescribed in Section 249(2) of the Income Tax Act by holding that the appellant has failed to show sufficient cause for failure to present of appeal within the prescribed time.*
2. *It is prayed that the learned Commissioner of Income Tax (Appeals) be directed to admit the appeal under Section 249(3) of the Act and adjudicate the appeal on the merits of the grounds of appeal.*

2. The brief facts of the case that, the assessee is an individual and derives income from salary and income from other sources. The Assessee has filed the return of income for the assessment year 2015-16 on 04.01.2016 disclosing a total income of Rs.1,38,000/- and the return of income was processed under Section 143(1) of the Income Tax Act, 1961 (in short "the Act"). Subsequently, the case was selected for limited scrutiny and the Assessing Officer(A.O) has issued notice under Section 143(2) and 142(1) of the Act. In-compliance to notice the assessee has filed the details from time to time and furnished the requisite details. The Assessing Officer(A.O.) found that the assessee has donated 500gms of gold worth Rs.14,00,000/- to Shree Kharasuri Ambaji Mata Trust out of her "Astha" and

claimed exemption under Section 80G of the Act and a show cause notice was issued for claiming 100% deduction u/sec80G of the Act. Whereas, the assessee has filed a reply on 23.10.2017 referred at Para 5 of the assessment order. The AO was not satisfied with the explanations and reasons submitted on the donations and no proof was submitted. Therefore, the AO has denied the deduction under Section 80G of Act of Rs.13,60,000/-. On the second disputed issue, the AO found that the assessee has offered income of Rs.12,00,000/- as remuneration from M/s Adhyay Construction and the AO required the assessee to submit Form.no.16 in support of salary income and the assessee also offered rental income of Rs.4,88,000/-. Since, the no explanations were submitted and the assessee has failed to prove the source and receipt of income, the A.O. treated the entire income as unexplained money under Section 69A of the Act and assessed the total income of Rs.16,89,320/-and passed the order under Section 143(3) of the Act dated 04.12.2017.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A) whereas, the CIT(A) found that there is a delay of 1 year 6 months 11 days in filing the appeal. Whereas the A.O. has passed an rectification order U/sec154 of the Act invoking the tax rate U/sec115BBE of the Act on 18-06-2019 and the assessee has filed the appeal against order u/sec154 of the Act with in time. Further the assessee has also filed appeal against orderU/sec143(3) of the Act with a petition for condonation of delay. Whereas the CIT(A) was not satisfied with the submissions relied on the material information and observed that the appeal was not filed

within the time and delay could not be explained and without condoning the delay has dismissed the appeal. Aggrieved by the order of CIT(A) the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in dismissing the appeal without condonation of delay and over looking vital facts and explanations. Further the assessee was perusing the suo moto rectification proceedings of the Assessing officer U/sec154 of the Act on the chargeability of tax u/sec115BBE of the Act. The Ld.AR submitted that the assessee has good case on merits and prayed for condonation of delay and opportunity of hearing be provided before the lower authorities to substantiate the claim with the material evidences and supported the submissions with the paper book. Per contra, Ld.DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the materials on record. We find that the assessee has filed the appeal for condonation of delay in filling the appeal with the CIT(A) and the assessee was pursuing suo motto rectification proceedings by the Assessing officer in respect of chargeability of Tax u/sec115BBE of the Act. Therefore, delay in filing the appeal before the CIT(A) is not an wanton Act but due to the alternative remedy pursued. We found that the assessing officer has issued notice U/sec154 of the Act dated 11.10.2018 and the assessee has filed reply on 22.10.2018 and finally the A.O. has passed rectification order U/sec154 of the Act dated 18-06-2019 and whereas, the assessee has filed an appeal with the CIT(A) on 27.07.2019. Further as per

Form no 35, the assessee has mentioned date of the service of order on 10-12-2017 in respect of order U/sec143(3) of the Act passed on 4-12-2017. The assessee was perusing the suo-motto rectification proceedings u/sec154 of the Act with the Assessing officer. We find the A.O. has issued notice U/sec154 of the Act on 11-10-2018. Therefore we find that the assessee was perusing the proceedings before A.O. hence the time period from 11-10-2018 to the date of filing of the appeal by the assessee against the Order U/sec143(3) of the Act with the CIT(A) on 20-07-2019 can be considered as reasonable cause and we condoned the delay. Now the question before us, the assessee has received the order U/sec143(3) of the Act on 10-12-2017 and therefore we are of the opinion that the assessee should explain the reasonable cause for delay for the period till date of notice issued by the A.O in suo-motto rectification proceedings i.e.11-10-2018. We considering the facts, circumstances and the delay as discussed above restore the disputed issue to the file of the CIT(A) to consider the application explaining the reasonable cause on the delay for the period 10-12-2017 to 11-10-2018 and adjudicate afresh on merits considering the material evidences filed in course of hearing, further, the assessee should be provided adequate opportunity of hearing and cooperate in submitting the information but early disposal of appeal and allow the grounds of appeal of the assessee for statistical purpose.

ITA No. 1344/M/2022.

6. The assessee has filed an appeal against the order passed by the CIT(A) under Section 154 and 250 of the Act. Since the assessee appeal ITA no 1343/M/2022

was restored to the file of CIT(A) with directions. We considered it appropriate to restore this appeal also to the CIT(A) to be decided along with the appeal filed against order U/sec143(3) of the Act and allow the grounds of appeal of the assessee for statistical purpose.

7. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on the 29th September 2022.

Sd/-

(BASKARAN BR)

ACCOUNTANT MEMBER

Mumbai, Dated: 29/09/2022

M. Sonavane

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)ITAT,

Mumbai