

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(VIRTUAL COURT)

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 133 to 137/Asr/2021
Assessment Years: 2016-17 to 2020-21

Executive Engineer
Floriculture, Radio Colony
Rajbagh Srinagar, 190008,
Jammu & Kashmir

[TAN: AMRE 10520G]

(Appellant)

Vs. Dy. CIT, CPC (TDS)
Srinagar

(Respondent)

Appellant by : Sh. Mohd. Iqbal Untoo, CA
Respondent by: Ms. Amanpreet Kaur, Sr. DR

Date of Hearing: 26.09.2022
Date of Pronouncement: 10.10.2022

ORDER

Per Bench:

These bunch of appeals have been filed by the assessee against the order even dated 25.08.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, challenging

there in ex-parte order passed by the CIT(A) qua the assessee without giving an opportunity of being heard in view of the principles of natural justice.

2. The learned AR submitted that the order of the Id. CIT(A) was received on 25.08.2021 and appeal was filed on 09.11.2021 and thus, these appeals are filed late by 16 days. It was further submitted in the application dated 29.11.2021 that the Hon'ble Apex Court suo moto extended the limitation period from 15.03.2020 to 02.11.2021. Therefore, in view of the judgment of the Hon'ble Apex Court in Miscellaneous Application No. 665 of 2021 in SMWC No. 3 of 2020 in cognizance for extension of limitation in view of prevalent of Covid-19 virus in the case of the assessee the period from 25.08.2021 to 02.10.2021 shall be excluded while computing the period of limitation of 16 days. It is noted that there was a delay of 4 years in filing the appeal before the Id. CIT(A) where the CIT(A) has rejected the condonation of delay for want of documentary proof in support of the reasons for such a long delay claimed by the appellant. The CIT appeal, however, being not satisfied with the bona fide of the reasons, he dismissed the appeal on account of delay however, he has examined the issue in appeal on merits, without representation of the

assessee as being not received on the Income Tax Portal as for the technical reasons as claimed by the assessee.

3. It is settled principle that expression "Sufficient Cause" ought to be interpreted in a manner which deserves and advances the cause of substantial justice. The Hon'ble Apex Court in the case of State of West Bengal Vs The Administrator, Howrah Municipality reported in AIR 1972 page 749 (SC) had held that the scope of expression "Sufficient Cause" for the Condonation of delay should receive a Liberal Construction. The issue of Condonation of delay was dealt by the Income Tax Appellate Tribunal (ITAT), Ahmedabad bench in the case of M/S Tejas Karshanbhai vs ITO as on 29.04.2022 vide Appeal no **CIT(A)-5/ITO Wd.5(1)(1)/10682/2018-19**, wherein the Tribunal has held that the Commissioner (Appeals) **shall condone the delay and dispose the appeal on merits if the assessee has not acted in a mala fide manner** in order to avoid unnecessary burden to the assessee. Also the ITAT Bench of Bangalore has held in the case of M/S SAMEER GRANITES PVT LTD Vide ITA No 519/Bang/2021 & Ors dated 30.12.2021, that the delay should be condoned unless mala fides on conduct of parties. (Copy of case law attached). Recently, the National Faceless Appeal Centre (NFAC) as on 24.09.2021 in the case of **Police Transport Workshop** vide order no ITBA/NFAC/S/250/2021-

22/1035852803(1) wherein the CIT (A) **has accepted the delay of 3 years** on **the same reasons** that has been explained in detail by the Appellant in the present case. ***(Copy of Order under section 250 along with Condonation of delay annexed at the time of filing of appeal of Police transport workshop is attached)***. Also it is worthwhile to mention here that the National Faceless Appeal Centre Delhi as on 24.11.2021 in the case of KV01 BBCANTT BATWARA SRINAGAR vide Order No ITBA/NFAC/S/250/2021-22/1037171129(1) has condoned the delay of 4 years on **the reason that the DDO was not aware about the existence of demand** and thereby was ignorant about filing of appeal within 30 days. The Honorable CIT (A) held that there was reasonable and sufficient cause for not presenting the Appeal within 30 days.

4. The counsel submitted that a prevalent situation in Kashmir valley regarding curfew/hartals which hinders the working environments and due to this the internet connectivity is also disturbed frequently for a long period of time due to security reasons. Considering the reasons & circumstances discussed as above which proved the bona fides of the assessee for delay in filing the appeal before the learned CIT appeal which was beyond its control. The Id. CIT(A) ought to have appreciated the bona fide reasons for

the delay in filing the appeals and condoned the delay and admitted the appeal before deciding the appeal on merits. Considering the bona-fide reasons beyond the control of the assessee, the delay of in filing the appeal is hereby condoned and these appeals are admitted for hearing on merits.

5. At the outset, the Id. counsel for the assessee submitted that the assessee has not been provided the proper opportunity of being heard; that the appellate orders have been passed without granting any opportunity of being heard is in violation of principle of natural justice. It was further submitted that the Id. CIT(A) has dismissed the appeal of the assessee stating that no representation has been made by the assessee despite the fact that a new Income Tax Portal launched on 7th June, 2021 remained unavailable (showing technical error) for submitting any responses to the notices issued and thus the order passed without representation of the assessee is in violation of principle of natural justice.

6. The counsel has further stated in the virtual hearing that the Id. CIT(A) was not justified in disposing of the appeal without serving any mandatory notices as per law on the assessee and deciding the appeal without adjudicating the grounds on merits of the case by taking the version of the assessee on the grounds of appeal. The Id. counsel prayed that the

appeal may be remanded back to the Id. CIT(A) to pass a speaking order on merits of the cases.

7. Per contra, the Id. Addl. CIT-DR stands by the orders of the Id. CIT(A), however, he has no objection to the request of the assessee in restoring the appeal to the Id. CIT(A) to pass a speaking order.

8. We have heard the rival contentions, perused the material on record. Admittedly, the CIT(A) has passed the impugned orders ex-parte qua the assessee without considering any representations from the side of the appellant-assessee in view of the technical glitches in the income tax portal. It is noted that the Id. CIT(A) ignored the fact that the new Income Tax Portal was launched on 7th June, 2021 and the two notices of hearing issued could not be complied with by the assessee for the technical reason in spite of the fact that the appellant has made many attempts to upload the response to the said notice but unfortunately the new income tax Portal was facing glitches and was not allowing to upload the response to the said notice as contended by the Id. counsel for the assessee. The Id. AR argued that the second notice dated 28.07.2021 issued by the Id. CIT(A) fixing the case for hearing as on 04.08.2021 was also could not be complied with, for the same technical reason. Although, the counsel tried to upload the

response to the notice but the portal was still facing the glitches and was not allowing uploading the response to the notices. It was stated by the Id. counsel that Meanwhile the Central government has created three dedicated email addresses for income taxpayers to register grievances related to faceless tax assessment, penalty and appeals, the Income-Tax (I-T) department on 07.08.2021(Saturday). The three email addresses were listed here under:

samadhan.faceless.assessment@incometax.gov.in;

samadhan.faceless.penalty@incometax.gov.in;and

samadhan.faceless.appeal@incometax.gov.in.

9. The learned AR contended that for seeking the resolution on the issue a mail was dropped to samadhan.faceless.appeal@incometax.gov.in **as on 11-08-2021** read as “THE REPLIES WERE REQUIRED TO BE SUBMITTED ON OR BEFORE 04.08.2021. HOWEVER DUE TO TECHNICAL GLITCHES WE ARE UNABLE TO UPLOAD THE REPLIES.” **Thereafter on 17.08.2021** the response was received from the above said mail “read as that the Grievance has been forwarded to concerned authorities for necessary resolution **but unfortunately** the CIT(A) passed the order u/s 250 as on **25.08.2021** before any resolution provided and

without giving any **proper opportunity of being heard**. (Copy Grievance mailed & its response is enclosed). He contended that when response could not be uploaded due to the technical glitches in the New Income Tax Portal, how the Ld CIT(A) can dismiss the Appeal without giving proper opportunity of being heard. It is the primary duty of the CBDT/Department to remove the short comings if any, in the system. If the system has been implemented by the department. He argued that how the assessee may be expected to correct the system and remove the technical stitches at their own.

10. Recently the Hon'ble Allahabad High court in the case of M/S NABCO PRODUCTS PRIVATE LIMITED vs UNION OF INDIA vide case no 997 of 2022 as on 03.08.2022 has held that if the system has been introduced and is being implemented by the Department and therefore, it is the primary duty of the department to immediately remove short comings, if any, in the system. For own wrongs of the department, the assessee cannot be allowed to suffer and put to harassment.

11. **It is worthwhile to mention here that even the Finance Minister as on 23- 08-2021 summoned the MD&CEO of Infosys and told him to explain why even after 2.5 months of the launch of the new income tax portal, the Glitches in the new income tax portal has not been**

resolved. The action of the finance minister and **submission of grievance and the relevant case law supports** the contention of the appellant that due to glitches in the portal they were unable to file and upload their submission which shall be considered as **reasonable cause and beyond the control of the assessee.**

12. The Income Tax Appellate Tribunal Delhi bench in the case of M/s Gopi Chand vs ITO Ward-2(4) Noida UP vide ITA No. 3386/DEL/2018 Dated 28.03.2018 has observed that after considering the submissions of both the parties and perused the material available on the record and has noticed that the Id. CIT(A) decided the appeal of the assessee ex-parte but nothing is brought on record to substantiate that the notice of hearing was served upon the assessee. It is well settled that nobody should be condemned unheard as the maxim audi alteram partem. Therefore the bench, by keeping in view the principles of natural justice, deem it appropriate to set aside this issue back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

13. In view the principles of natural justice, We deem it appropriate to set aside this issues in these appeals back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and

reasonable opportunity of being heard to the assessee. The assessee are directed to cooperate in fresh proceedings before the Ld. CIT(A).

14. In result, all the subject appeals are allowed for statistical purpose.

Order pronounced in the open court on 10.10.2022

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr/PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy
By Order