

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU (SMC) “A” BENCH, BENGALURU**

Before Shri Chandra Poojari, Accountant Member

ITA Nos. 1173 & 1174/Bang/2022 (Assessment Years: 2015-16 & 2016-17)		
Shri Srinivasan Sathiyamoorthy 1st Floor, Rosy Tower No. 7 Nungambakkam High Road Chennai 600034 PAN – BNRPS0527H	vs	The Income Tax Officer- 5(3)(5) No. 59, HMT Bhavan, 4th Floor Ballari Road, Ganganagar Bangalore 560032
(Appellant)		(Respondent)

Assessee by:	Shri G. Baskar, Advocate
Revenue by:	Shri Ganesh R.Ghale, Standing Counsel

Date of hearing:	17.01.2023
Date of pronouncement:	17.01.2023

ORDER

Per: Chandra Poojari, A.M.

These two appeals by the assessee are directed against the order of the learned CIT(A), NFAC, Delhi, both dated 21.09.2022 for assessment years 2015-16 and 2016-17.

2. The assessee has raised the following common grounds in both the assessment years, with only change is in figures: -

- “1. *The order of the Commissioner of Income Tax (Appeals) is illegal and passed in complete non-consideration of the facts and circumstances of the case.*
2. *The CIT(A) grossly erred in dismissing the appeal filed by the appellant for the reason that the appeal had been filed beyond the due date without any reasonable cause.*

- 2.1 *The CIT(A) erred in failing to consider the fact that the appellant was unaware of the assessment order having been passed and thus the impugned order dismissing the appeal for want of limitation without considering the merits of the case is to be quashed.*
- 2.2 *The CIT(A) ought to have seen considered the fact that the delay in filing the appeal was due to the inaction on the part of the representative of the appellant.*
- 2.3 *The appellant residing abroad, had entrusted his representative to represent the case before the Assessing Officer (AO) and thus the CIT(A) erred in stating that the appellant was at fault for not responding and not the representative.*
3. *The CIT(A) ought to have quashed the entire order as the reopening of assessment is invalid as per the provisions of the Act and judicial mandate.*
4. *The CIT(A) erred in upholding the disallowance the claim of loss from house property of Rs.3,98,600/- when the same was actually incurred by the appellant.*
5. *The CIT(A) erred in upholding the disallowance of claim of deduction of Rs.2,67,200/- under Chapter - VI A of the Act when the same was disallowed by the AO without assigning any reason.”*

3. The facts of the case are that the assessee was employed with M/s. Oracle Solutions Services Pvt. Ltd. The assessee had filed his original return of income on 15.07.2015 declaring total income at Rs.2,62,920/-. In the return filed, the assessee had declared income from salary of Rs.9,27,957/-, loss from House Property of Rs.3,98,600/-, income from other sources of Rs.760/- and had claimed deduction under Chapter VIA of the Income Tax Act, 1961 (the Act). A search was conducted at the premises of Shri Nagesh Shastri, Tax Consultant engaged in making bogus/false claim of loss from house property. On verification it was seen that the assessee was one of his clients. Accordingly notice under Section 148 of the Act dated 24.04.2018 was issued by AO. There was no response from the assessee to the notice issued. A show cause notice was issued by the AO on 18.10.2019 proposing to complete the

assessment under Section 144 of the Act. The assessee did not comply. Hence, the assessment was concluded by the AO under Section 144 r.w.s. 147 of the Act, based on the details available on record. AO determined the total income at Rs.9,27,957/- after disallowing loss from house property and all deduction claims. Similar is the facts in AY 2016-18 also.

4. There is a delay of 36 days in filing these appeals before this Tribunal. The assessee explained the delay in his condonation petition as follows: -

“AFFIDAVIT OF SRINIVASAN SATHIYAMOORTHY

I, Srinivasan Sathiyamoorthy, son of Srinivasan G, aged about 39 years, residing at 1 Bute Road, Barking Side, Ilford, London, England IG6 1AF do hereby solemnly and sincerely affirm and state as follows:

- 1. I am the Petitioner herein and I am well acquainted with the facts of the case and as such competent to swear this Affidavit.*
- 2. I submit that search proceedings were conducted in the case of my Tax Consultant at the time following which my assessments for the A.Ys.2015-16 & 2016-17 were reopened by the Respondent herein. I was employed by KPMG LLP UK and was residing in London, England since 2019. I had entrusted all my income tax compliances to my representative in India and he was supposed to handle the same. Since he failed to participate in the assessment proceedings, I was unaware of the same and of the assessment orders dated 09.12.2019 and 05.12.2019 for the A.Ys.2015-16 & 2016-17 respectively passed by the Respondent.*
- 3. I submit that thereafter I lost sight of the assessments altogether due to the global COVID-19 pandemic. Later, when I came to know of the assessment orders, I immediately took steps to file the appeal before the CIT(A) and the same was filed on 01.04.2022 for A.Y.2015-16 and on 29.03.2022 for the A.Y.2016-17. During the appeal proceedings, I duly filed my responses on 21.07.2022 for both the years and on 18.09.2022 for the A.Y.2015-16 within the due dates mentioned by the CIT(A). I submit that the CIT(A) then passed the*

impugned orders u/s.250 of the Act on 21.09.2022 wherein both the appeals were dismissed.

4. *I submit that I noticed the impugned orders only on 01.12.2022 as I lost sight of the appeal proceedings once the submissions were complete. I then immediately forwarded the impugned orders and other details to my present counsel to file further appeals before this Hon'ble Tribunal. The present appeals challenging the order of the CIT(A) dated 21.09.2022 for the two A.Ys. ought to have been filed on or before 20.11.2022 but are only being filed on 26.12.2022 with a delay of 36 days.*
5. *The delay in filing the appeals is neither wilful nor wanton, but only for the reasons stated above. It is also submitted that the Appellant has a good case on merits and would be put to great loss and hardship if the delay is not condoned. On the other hand no harm would be caused to the Revenue.*
6. *I pray that this Hon'ble Tribunal be pleased to*
 - (i) *condone the delay of 36 days in filing the appeals;*
 - (ii) *Admit, hear and dispose of the appeals in accordance with law;*
 - (iii) *Pass such further or other order or orders that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case**and thus render justice.*
7. *I declare, verify and state that what is stated in paragraphs 1 to 5 above are true to the best of my knowledge and belief.*



**DEPONENT
BEFORE ME**

*Solemnly affirmed at London on this
the Wed, 14th day of December, 2022 and
signed his name in my presence.*

NOTARY PUBLIC

*14 DECEMBER 2022
SIGNED BEFORE ME BY
SATHIYAMOORTH
SRINIVASAN
INDIAN PASSPORT 24117338*

*RAJ PRE T SIGH DUILLON
NOTARY PUBLIC
26 Cameron Road, London IG3 8LB
England, UK
00 44 208 262 6565”*

Similar petition for AY 2016-17 is also filed by the assessee.

5. I have heard the rival contentions and perused the condonation petition filed by the assessee. It was stated that the delay was due to the fact that the assessee is a non-resident employed in London and residing there since 2019. The assessee entrusted the work to his representative in India and he failed to take proper steps on this matter in time which caused the delay in filing the appeals. In my opinion, the assessee being a non-resident entrusted the work to some representative who is in India and his inaction caused the delay of 36 days in filing the appeals in both the years. As soon as the assessee came to know the fact he has taken steps and entrusted the work to the present counsel and thereafter the assessee's signatures are to be attested by Notary Public in London. Preparation, execution and sending the same documents to the present counsel took little time and caused a short delay of 36 days. In my opinion there is good and sufficient reason in filing the appeal belatedly by 36 days. Accordingly, in the interest of justice, I condone the delay of 36 days in the filing both the appeals before this Tribunal and admit the appeals for adjudication.

6. After condoning the above delay, I noticed that these appeals are also filed belatedly before the learned CIT(A) by 815 days in AY 2015-16 and 816

days in AY 2016-17. The learned A.R. submitted a chart showing the delay as follows: -

	AY	Date of order of assessment	Appeal before CIT(A)			Covid delay (15.03.2020 to 28.02.2022)	Non-Covid delay
			Due date	Filed on	Delay		
1.	2015-16	09.12.2019	08.01.2020	01.04.2022	815 days	715 days	100 days
2.	2016-17	05.12.2019	04.01.2020	29.03.2020	816 days	715 days	101 days

As seen from the above, if I exclude the Covid period there is an actual delay of 100 days in AY 2015-16 and 101 days in AY 2016-17. The delay during the Covid period has been condoned by the Hon'ble Supreme Court by the order in the case of Cognizance for Extension of Limitation period in (2021) 438 ITR 296 (SC). That delay need not be explained by the assessee. Coming to the delay before and after the Covid period, i.e. 100 days in AY 2015-16 and 101 days in AY 2016-17 the assessee explained the reasons for delay that the assessee being non-resident was not aware of the passing of orders by the AO in these cases and in the meantime there was Covid pandemic all over the world which missed his attention and it was out of sight and also out of mind and he failed to take appropriate steps during this period. In my opinion, the mistake of the assessee is bonafide and it is a human nature to forget things which is out of his mind and I do find that the inaction on the part of the assessee is unintentional being a non-resident. Accordingly, I condone the delay in filing the appeals before the CIT(A) and remand the entire issue in dispute to the file of the AO for his fresh consideration for giving opportunity of hearing to the assessee in both the assessment years as the assessment order are passed ex-parte under Section 144 of the Act.

7. At this point, I refrain from commenting anything on the merit of additions made by the AO since that issue is remitted to the file of AO for fresh consideration.

8. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Dictated and pronounced in the open Court on 17th January, 2023.

Sd/-
(Chandra Poojari)
Accountant Member

Bengaluru, Dated: 17th January, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Bengaluru*

n.p.