

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

**BEFORE**

**SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.599/Hyd/2022		
Assessment Year: 2017-18		
Jaber Bin Sayeed Bin Gursain, Hyderabad.  PAN : ASSPB8413A.  (Appellant)	Vs.	The Income Tax Officer, Ward 9(2), Hyderabad.  (Respondent)
Assessee by:	Shri T. Chaitanya Kumar	
Revenue by:	Ms. Reema Yadav.	
Date of hearing:	18.01.2023	
Date of pronouncement:	18.01.2023	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.24.11.2021 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

*“1. The order of the ld. Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC) is erroneous both on facts and in law in dismissing the appeal without giving any proper opportunity.*

*2. The order of the ld. CIT(A) erred in confirming the action of the Assessing Officer in dismissing the appeal without giving proper opportunity.*

*3. The order of the ld. CIT(A) erred in confirming the action of the Assessing Officer in treating an amount of Rs.27,67,684/- as income of the appellant u/s 69A of the I.T. Act without giving any proper opportunity.*

*4. The order of the ld. CIT(A) ought to have seen that the source for the cash deposited of Rs.27,67,684/- is available before the appellant.*

*3. The order of the ld. CIT(A) erred in confirming the action of the Assessing Officer in applying provision u/s 115BBE further erred in raising demand of Rs.34,63,596/- without giving any proper opportunity.*

*6. The order of the ld. CIT(A) is erred in changing interest u/s 234A of Rs.6,20,020/- 234B Rs.7,05,540/-.”*

3. Facts of the case, in brief, are that the assessee is an individual deriving income from business as in running hotel Dhaba in national high way. The Assessing Officer on the basis of CASS reasons, selected the case and converted into scrutiny and issued notice to the assessee. Thereafter, Assessing Officer completed the assessment u/s 144 of the Act determining the total income of the assessee at Rs.27,67,684/- by treating the transactions as from undisclosed sources of income u/s 69A of the Act. The Assessing Officer further levied tax u/s 115BEE in issuing notices u/s 156 demand of Rs,34,63,596/-.

4. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before Id.CIT(A), who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

6. The Id. AR for the assessee had drawn our attention to the orders passed by the Assessing Officer and the Id.CIT(A). He has drawn our attention to Para 4 of the order passed by the Id.CIT(A) which is to the following effect :

*“4. During the course of appellate proceedings, the appellant was granted opportunity to file submissions and documents in support of its grounds of appeal vide notices dated 22.01.2021 (fixing date of compliance 29.01.2021) and 14.10.2021 (fixing date of compliance 21.10.2021) after implementation of faceless appeal scheme. However, till date there has been no response from the appellant. Therefore, it is apparent that the appellant have no submissions/documents to submit in support of its grounds of appeal. I have considered the statement of facts and grounds of appeals filed as well as the assessment order. On carefully considering the facts and circumstances and assessment order, I find no infirmity in the assessment order. It is a fact that there was cash deposit in bank accounts/ cash repayments in housing loan account, which appellant could not explain. Most of the cash deposits were during demonetization period i.e. 08.11.2016 to 31.12.2016. No return was also filed by the appellant either suo moto or in response to notice u/s 142(1) of the I.T. Act.. Accordingly the addition made by the AO is confirmed.*

*Thus all grounds of appeal fail and hence dismissed.”*

7. It was the contention of Id.AR that on account of covid, the assessee was not able to properly follow the appeal filed before the Id.CIT(A) as well as before the Tribunal. He relied upon the direction of Hon'ble Supreme Court in the Suo Motu proceedings in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 wherein it was held that in cases, where the limitation would have expired during the period between 15/03/2020 and 28/02/2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01/03/2022, and in the event of actual balance period of limitation remaining with effect from 01/03/2022 is greater than 90 days, that longer period shall apply.

8. Per contra, the Id.DR had relied upon the orders passed by the lower authorities. He had drawn our attention

9. I have heard the rival submissions and perused the material on record. In this connection, the assessee has stated that the delay in prosecution of the appeal and filing of the present appeal was due to lock down imposed by the central government as preventive measures to contain the spread of Covid-19 from 23/03/2020, caused the impugned delay in filing the appeal belatedly. Further, as referred by Id. AR, the Hon'ble Supreme Court in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 had extended the period of limitation. In view of the above circumstances and

respectfully following the direction of Hon'ble Supreme Court and relying upon the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, I hold that such a delay in filing the appeal was supported by cogent reasons and hence, deserves to be condoned so as to make way for the cause of substantial justice. Thus, the limitation period applicable to appeal is covered by the above said decision and therefore, the appeal shall be treated as filed within the period of limitation.

10. As the Id.CIT(A) has not decided the appeal of assessee on merits, therefore, I am of the view that the ends of justice will be met if the matter may be sent back to the file of Id.CIT(A) with a direction to decide the issue after verifying all the documents/ evidence. The above said exercise be carried out after considering the documents available on record and affording the opportunities of hearing to the assessee in accordance with law. The assessee shall be at liberty to file documents, if any, as required for proving its case and the Id.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the Id.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Id.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 18<sup>th</sup> January, 2023.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Hyderabad, dated 18<sup>th</sup> January, 2023.

***TYNN/sps***

Copy to:

S.No	Addresses
1	Jaber Bin Sayeed Bin Gursain, C/o. T. Chaitanya Kumar, Advocate, Flat No.102, Gowri Apartments, URDU Lane, Himayathnagar, Hyderabad.
2	The Income Tax Officer, Ward 9(2), Hyderabad.
3	Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*