

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

**Before Shri Sanjay Arora, Accountant Member and
Shri Sandeep Gosain, Judicial Member**

ITA No. 282/Coch/2021
(Assessment Year: 2014-15)

Shri T.K. Thampi
10/649, Thekkedathu House
Kusumagiri, Kakkanad
Kochi 682030

The Income Tax Officer-1(5)
Range 1, Non-Corporate
Vs. C.R. Building, I.S. Press Road
Kochi 682018

PAN – ADAPT1840N

Appellant

Respondent

Appellant by: Shri T.K. Thampi
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 31.01.2023
Date of Pronouncement: 03.02.2023

ORDER

Per: Bench

This is an appeal filed by the assessee against the order of the CIT(A)/National Faceless Appeal Centre (NFAC), Delhi dated 27.10.2021 in appeal No. CIT(A), Kochi-21/10473/2016-17 for AY 2014-15.

2. The assessee has raised the following grounds of appeal: -

- “1. Assessing authority has done in justice by completing the assessment without giving an opportunity to produce further evidences as directed by him.*
- 2. The amounts borrowed were from relatives, agriculturist and residing at up country centers and there was no time to collect the required information and submit before the Assessing Authority.*
- 3. If time was given, the appellant would have provided and met with the direction of the Assessing Authority.*

4. *Denial of an opportunity to the Appellant has resulted in the additions of Rs 24,02,000 and assessment of the same u/s 68 of the Income Tax Act.*
5. *The Appellant is seeking an opportunity to represent his case, since the assessment was completed in a hurried manner."*

3. The brief facts of the case are that the assessee filed its return of income for the year under consideration declaring Nil income. The case was selected under CASS. After providing opportunity of hearing, the AO finalised the assessment under Section 143(3) of Income Tax Act, 1961 (hereinafter "the Act") by making addition under Section 68 of the Act.

4. Aggrieved by the order of the AO the assessee preferred appeal before the learned CIT(A). However, the learned CIT(A) dismissed the appeal filed by the assessee as un-admitted by holding that there was a delay of one day in filing the appeal by the assessee. Aggrieved, the assessee preferred the present appeal before us on the grounds mentioned hereinabove.

5. At the outset the assessee submitted that the learned CIT(A) erred in dismissing the appeal as not admitted, as he ought to have find that a specific opportunity was not given to the assessee making it clear about his intention to dismiss the appeal as unadmitted. It was also submitted that the assessee was not really aware that the appeal was belated by one day and in case had he known it, the appeal memo itself would have accompanied by a petition for condonation of delay. It was also submitted that there was no conscious omission on the part of the assessee to apply for condonation of delay of delay in filing the appeal.

6. On the other hand, the learned D.R. relied on the orders passed by the Revenue authorities.

7. We have heard the parties and have also perused the orders passed by the Revenue Authorities. From the records we find that there was a delay of one day in filing the appeal by the assessee. However, it was pointed out through notices dated 03.09.2021, 08.10.2021 and 18.10.2021 about this discrepancy of delay in filing the appeal. However,

the same had not been complied with by the assessee. On this aspect the assessee submitted that he did not really notice this mention as the said mention was on the back side of the notice. Therefore, neither the assessee nor his representative could notice the annexure to the notice of hearing, and it was also submitted that had the assessee been aware of such delay, he would have filed a petition for condonation of delay then and there. Further, after considering the arguments at length, we are of the view that although sufficient opportunities were provided to the assessee as mentioned in para 3 of the order of the learned CIT(A), thereby pointed out the said discrepancy of delay in filing the appeal. But, the same could not be complied with by the assessee bonafidely as according to the assessee he could not notice the said discrepancy as the same was mentioned on the back side of the said notice. Therefore, considering this fact, the Bench is not in agreement with the argument of the assessee that sufficient opportunity was not provided to the assessee. However, considering the interest of equity and justice, the Bench feels that since the grounds raised by the assessee could not be decided on merits by the learned CIT(A), we are of the view that the grounds raised by the assessee before the learned CIT(A) needs afresh consideration by the learned CIT(A). At the same time we are of the view that since the assessee was deprived of hearing the case on merits before the CIT(A), therefore, by taking a lenient view and also keeping in view the interest of justice, equity and fair play, one more chance is given to the assessee to substantiate its case before he CIT(A) by submitting necessary application for seeking of condonation/ evidences, etc. Therefore, under these circumstances we restore the matter to the file of the CIT(A) to decide the appeal afresh after taking into consideration the application for condonation of delay or documents, if any, filed by the assessee before the learned CIT(A) by providing adequate opportunity of hearing to the assessee.

8. Before parting we make it clear that our decision to restore the matter back to the file of learned CIT(A) may in no way be construed as having any reflection or expression on the merits of the dispute, which

shall be adjudicated by the learned CIT(A) independently in accordance with law. At the same time the assessee is also directed to cooperate with First Appellate Authority and also will not seek unnecessary adjournments on frivolous grounds.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes with no orders as to cost.

Dictated and pronounced in the open Court on 3rd February, 2023.

Sd/-
(Sanjay Arora)
Accountant Member

Sd/-
(Sandeep Gosain)
Judicial Member

Cochin, Dated: 3rd February, 2023

Copy to:

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

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.