

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

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

**I.T.A. No.184/Asr/2021
Assessment Year: 2013-14**

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| Bhagat Prakash Kamal Sharma, H.No.181F Sec.-11, Lane No.12, Nanak Nagar, Railway Road, Jammu. [PAN: BJGPS191E] (Appellant) | Vs. | Income Tax Officer, Ward-1(1), Jammu. (Respondent) |
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| Appellant by | Sh. Rajesh Shah, CA. |
| Respondent by | Sh. Rajeev Wadhwa, Sr. DR |

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| Date of Hearing | 06.02.2023 |
| Date of Pronouncement | 07.02.2023 |

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeal), NFAC, Delhi,[in brevity the 'CIT (A)'] bearing appeal DIN & Order No. ITBA/NFAC/S/250/2021-22/1036267101(1), date of order 09.10.2021, the order passed u/s 250 of the Income Tax Act 1961, [in

brevity the Act] for A.Y. 2013-14. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-1, Dimapur, (in brevity the AO) order passed u/s 144 of the Act date of order 29.03.2016.

2. Assessee has filed an application for condonation of delay of 7 days. Wherein, the assessee had explained the delay & prayed for condoning the delay. The Id. Sr. DR has not made any strong objection against the petition. The number of delays is negligible. The delay of 7 days is condoned. The appeal of assessee is taken for hearing.

3. The assessment for impugned assessment year was completed by the ITO, Nagaland which is not under jurisdiction of the ITAT, Amritsar. The clarification was asked for about the change of jurisdiction. The Id. Counsel for assessee (in short AR) submitted the documents. As per the assessee the application was submitted by the assessee u/s 127 for change of jurisdiction from Nagaland to Jammu before the revenue authority. The order was passed u/s 127(2) of the Act dated 01.10.2019 and the current jurisdiction is fixed in ITO Ward-1(1), Jammu. Accordingly, the appeal order was passed by the NFAC. So, the appeal is under jurisdiction of ITAT, Amritsar Bench.

4. Brief fact of the case is that the ld. AR informed that the appeal was rejected by the ld. CIT(A) on the ground of limitation. The addition was made by the ld. AO in deposit of cash in the bank which was treated as unexplained deposit u/s 68 amount of Rs.67,32,000/- and addition of short-term capital gain for sale of land related to 1/3 share of the assessee amount of Rs.21 lacs. Being aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) had rejected the appeal of the assessee without considering the ground, only on point of limitation for delay filing of appeal. Being aggrieved assessee filed an appeal before us.

5. During hearing before ITAT, the ld. AR filed written submission which are kept in the record the ld. AR has pointed out the relevant paragraph no. 6.17 of the order of ld. CIT(A) which is extracted as below:

“6.17 This is not a case of change in law which is beneficial to the appellant and hence the delay in seeking such remedy may be condoned in the furtherance of substantial justice. Therefore, there is no denial or destruction of a statutory right in this case, by adhering to the prescribed period of limitation as otherwise it will only lead to protract the matter endlessly and will undoubtedly render the legislative scheme and intention behind the concerned provision otiose as held by the Hon’ble Supreme Court in the case of Assistant Commissioner

(CT) LTU, Kakinada &Ors. v. M/s Glaxo Smith Kline Consumer Health Care Limited 2020[36] G.S.T.L. 305.

6.18 It has been noted that assessment order was served on 14-07-2016, as per claim of the appellant, still appeal was filed after twenty-eight months i.e. on 27-02-2019 that implies the appellant attitude and deliberate inaction on the part of the appellant.

7. Considering the above discussion and facts, the appeal filed is not in conformity with the provisions of Sec 249(2) of the Act, and there is no sufficient cause for condonation of the delay in filing of the appeal, the present appeal is dismissed as not maintainable. Thus, the appeal filed by the appellant is dismissed as no maintainable.”

6. The ld. CIT(A) only on point of limitation rejected the appeal for absence of the ‘sufficient cause’ for delay & contravening the provision of section 249(2) of the Act for delay more than 28 months. During hearing, the ld. AR produced the affidavit, which is executed by the assessee and explanation of reason of delay for filing appeal. As per explanation, the assessee is a patient of psychotic symptoms, mood changes and was under treatment of Psychosis-ICD-9. So, the assessee was unable to present the matter before the AO and the delay for filing appeal was

occurred due to his medical ground. The copy of the affidavit is enclosed in **APB pages 1 to 3.**

7. The Id. AR further informed that the cash was deposited in bank account from sale of property made by the assessee during the F.Y. 2012-13. There is sufficient explanation with assessee against the addition. Only for health ground the assessee was unable to explain the same before the Id. AO.

8. The Id. DR only relied on the order of both the revenue authorities.

9. We heard the rival submission and perused the documents available on the record. During the hearing the assessee submitted the medical reports which are annexed in **APB page 4 to 26.** The medical report and affidavit of the assessee are clearly indicated that the assessee was suffering from psychotic symptoms and mood changes and also going through a medical treatment. The Id. AR submitted that the cash deposit in the bank account was from the sale of property. Due to medical ground the assessee was unable to produce the documents before the Id. AO in proper manner. The Id. CIT(A) has not adjudicated the quantum appeal due to the ground of limitation. There is sufficient cause for assessee for filing of appeal beyond the limitation. We find that the assessee was not properly represented before any of the lower authorities. The order of assessment is passed

by the ld. AO u/s 144. So, in our considered view, we remit back the matter to the ld. AO for fresh adjudication *de novo*. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanations submitted by assessee in his defence shall be admitted by AO and adjudicated on merits in accordance with law. We order accordingly.

10. In the result, the appeal of the assessee bearing **ITA No. 184/Asr/2021** is allowed for statistical purposes.

Order pronounced in the open court on 07.02.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

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

True Copy
By Order