

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2690/DEL/2022
[Assessment Year: 2018-19]

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| Naveen Chandra Bhatt, E-48/4, Okhla Industrial Area-II, New Delhi-110020. PAN- ALPPB2384N | <u>Vs</u> | Income-tax Officer, Ward-71(2), Delhi. |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Shri Yudhister Mehtani, CA | |
| Department represented by | Shri Om parkash, Sr. DR | |
| Date of hearing | 21.02.2023 | |
| Date of pronouncement | 22.02.2023 | |

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (INFAC), Delhi, dated 19.09.2022, pertaining to the assessment year 2018-19. The assessee has raised following grounds of appeal:

1. *That Ld. CIT(A) has erred in law and on the facts of the case in not condoning the delay in filing of appeal before CIT(A).*
2. *That in any case and in any view of the matter action of the Ld. CIT(A) is refusing the condonation of delay is bad in law and against the facts of the case.*
3. *That Ld. CIT(A) has erred in law and on the bad of the case is not*

deciding the appeal on the merits of the case.

4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

2. At the outset learned counsel for the assessee submitted that appeal of the assessee was dismissed by the learned CIT(Appeals) purely on the ground of delay. He submitted that the authorities below failed to appreciate the impact of the Covid-19. He submitted that the learned CIT(Appeals) ought to have been lenient to condone the delay. Learned counsel further took me through the application seeking condonation of delay filed before the authorities below.

3. On the other hand, learned DR opposed the submissions and submitted that there is no reasonable cause by which the assessee was prevented for not appearing before the learned CIT(Appeals).

4. I have heard rival contentions. I find that the learned CIT(Appeals) dismissed the appeal of the assessee by observing as under:

“4. DECISION:

I have carefully considered the assessment order passed by the A.O., and the submission uploaded by the appellant.

Condonation of delay:-

a. *Perusal of form 35 shows that the intimation was on 28.12.2019 and the appeal has been filed by 27.01.2022. Thus, the delay is for more than 2*

years.

b. *In view of the factual matrix, the present appeal has been filed intimation u/s 143(1) should have been filed within one month of 28.12.2019. The delay is almost of 2 year. Ideally, the appeal should have been filed on 28.01.2020. Income Tax law has provided a period of 30 days for filing appeal before CIT(A). However, in exceptional circumstances and cases where assessee have reasonable cause, due to which he is not able to file appeal within the provided time, then CIT(A) has the power to condone the delay*

Ideally return should have been filed by 28 January 2020.

Though as per Hon'ble Supreme Court order dated 10.01.2022 in M.A. No. 20 of 2022, regarding extension of limitation, where the appeal is to be considered to be filed in time, in view of the limitation period of extension. The same is not applicable in the Appellant case as the intimation was passed and served on the appellant on 28.12.2019 and legally the appeal should have been passed with one month from 28.12.2019. Till the period in question there was not sign of the pandemic due to covid-19. Therefore, I am not impressed by the delay in filing of appeal as the case neither take the plea of the pandemic nor take refuge under the Hon'ble Supreme Court order.

In view of the delay, I am not satisfied of the reasonability of the cause Filed u/s. 249(3) of the I.T. Act and treat the filing of appeal late and hence not- maintainable.

The appeal is dismissed for statistical purpose.”

5. It can be seen from the order of the learned CIT(Appeals) that the impugned assessment order was served upon the assessee on 28.12.2019. Therefore, the assessee was required to file appeal within thirty days of receipt of such order. It is pertinent to note that the Hon'ble Supreme court took suo motu cognizance and had passed the following directions:

“1. Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 23.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 23.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

“1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. *The Government of India shall amend the guidelines for containment zones, to state.*

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

3. *The Suo Motu Writ Petition is disposed of accordingly."*

6. In my considered view the learned CIT(Appeals) should have excluded the period of Covid-19. Hence looking to the totality of the facts I hereby condone the delay in filing of appeal before the learned CIT(Appeals) and restore the grounds of appeal to the file of learned CIT(Appeals) to decide the issue on merit. Grounds are allowed for statistical purposes.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 22nd February, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**

