

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'G': NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
ITA No.387/DEL/2022
[Assessment Year: 2009-10]

United Bank of India (Formerly) Now Punjab National Bank, Plot No.4, Sector-10, Dwarka, Delhi-110075	Vs	ACIT, LTU-1, Kolkata (under transfer to Circle-19(1), C.R. Building, IP Estate, New Delhi-110002
PAN-AAACU5624P		
Assessee		Revenue

Assessee by	Sh. K. Sampath, Adv. & Sh. V. Rajkumar, Adv.
Revenue by	Ms. Kajal Singh, Sr. DR

Date of Hearing	18.04.2023
Date of Pronouncement	26.04.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. National Faceless Appeal Centre (NFAC), Delhi, dated 29.12.2021 pertaining to Assessment Year 2009-10.

2. The grounds of appeal reads as under:-

"1. That on the facts of the case, the order passed by the CIT(A), National Faceless Appeal Centre us 250 of the Income Tax Act, 1961 dated 29.12.2021 is completely arbitrary, unjustified and illegal.

2. That the order is against the law and facts of the case.

3. That on the facts and circumstances of the case and provisions of the law, the Ld. CIT(A)/NFAC was not justified

to refuse to condone the delay in filing an appeal. It is prayed that delay in filing of the case be condoned and the appeal be adjudicated;

4. That on the facts and circumstances of the case and provisions of the law, the Ld. CIT(A)/NFAC erred in upholding the wrong calculation of interest done us 244A of the I.T. Act, 1961 by the ACIT and in perfunctorily dismissing the contentions raised by the assessee which action merits to be quashed with directions for allowing the prayer of the Appellant;

5. That on the facts and circumstances of the case and provisions of the law, the Ld. CIT(A)/NFAC erred in upholding the wrong charging of interest u/s 234D of the I.T. Act, 1961 by the ACIT and in perfunctorily dismissing the contentions raised by the assessee which action merits to be quashed with directions for allowing the prayer of the Appellant;

6. The above grounds are independent and without prejudice to one and other.

3. Brief facts of the case are that the assessee is Banking Company. For the Assessment Year 2009-10, the Return of Income was filed on 29/9/2009. The case was taken up for scrutiny and 143(3) order was passed on 29/12/2011. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(Appeals) and subsequently, the CIT(A) passed appellate order u/s 250 on 26/10/2012. Upon further appeal before the ITAT, the ITAT passed Order us 254 on 30/12/2015. The Assessing Officer passed the order giving effect to the ITAT order on 19.10.2016. Further, the AO passed suo-moto rectification order u/s154/143(3)/148/254 of the Act on 28.01.2017 and interest u/s 244A calculated at Rs. 593,62,608/-.

4. Against the above order, the assessee appealed before the National Faceless Appeal Centre.

5. The Ld. CIT(A) raised the issue of condonation of delay by observing as under:-

“Before proceeding ahead with the merits of the Appeal, it is important to first decide on the matter relating to the plea for condonation of delay in filing appeal. As mentioned in Para 1, this Appeal was instituted on 01.02.2019 against the order dated 28.11.2017 by the AO for the assessment year 2009-10. Thus there is a delay of 704 days in filing this appeal. However, the Appellant has claimed in Form 35 that the order was received by the Banking section on 1/12/2017 and so there is a delay of only 397 days in the filing of appeal against the order u/s u/s154/143(3)/148/254 dated 28.11.2017.”

6. The Ld. CIT(A) made elaborate discussion but did not consider it fit for condonation and dismissed the appeal in limine. On merits also, he passed a laconic order.

7. Against the above order, the assessee is in appeal before us.

8. We have heard both the parties and perused the records. The ld. Counsel for the assessee submitted that an identical case in the case of United Bank of India (now merged with PNB) for Assessment Year 2008-09 in ITA No.1903/Del/2021 dealt with identical issue and have condoned the delay as under:-

“2. Heard and perused the record.

3. Ld. AR submitted that Ld. CIT(A) has been unjust in not accepting the factual explanation of the delay while Ld. DR supported the findings of Ld. CIT(A).

4. Primarily the ground of appeal pressed is that NFAC was not justified in rejecting the condonation of delay.

5. Giving thoughtful consideration to the matter on record it can be observed that the assessee is a public sector bank. The present issue has a chequered history as reflected in para no. 2 of the order of Ld. CIT(A) as follows :-

“2. Brief Facts of the Case Briefly the facts of the case are that the appellant is Banking Company. For the Assessment Year 2008-09, the Return of Income was filed on 27/9/2008. The case was taken up for scrutiny and 143(3) order was passed on 31/12/2010. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(Appeals) and subsequently, the CIT(A) passed Appellate order u/s 250 on 26/12/2011. Upon further appeal before the Hon’ble ITAT, the ITAT passed Order u/s 254 on 19/06/2013. The Assessing Officer passed the Order giving effect to the ITAT judgment but the Assessee being aggrieved with the order, filed appeal before the CIT(A) taking the ground that the AO was wrong in not adding the interest u/s 244A alongwith Principal up to different dates and therefore, calculation of interest u/s 244A at Rs.19,82,92,424/- was completely arbitrary, unjustified and illegal. Consequently, the CIT(A)-17, Kolkata passed appeal order vide no 278/CIT(A)-17/Kol/15-16 dated 21.12.2016 and directed the AO to verify the claim of interest of the appellant u/s 244A and award refund along with proper interest. Accordingly, the Ld. AO passed the Order u/s 143(3)/254/251 order on 29/03/2017. However, the Assessee, being still aggrieved with the AO’s calculation of interest u/s 244A of the Act, again filed an appeal before the Appellate forum on 1/2/2019.”

6. Ld. CIT(A) was of the view that there is delay of 644 days as the appeal was instituted on 01.02.2019 against the assessment order dated 29.03.2017. The assessee claimed that the copy of order was received by the banking section on 01.12.2017 and so there is a delay of 397 days.

7. The reasons for the delay in appeal filed before Ld. CIT(A) have been reproduced in the impugned order in para no. 4.1 as follows :-

“4.1 Along with the appeal in Form no. 35, a letter is filed for condonation of delay stating inter-alia as under:-

"In the matter of condonation of delay under section 249(3) in presenting the appeal for assessment year 2008-09. That the effect order under section 254-251-143(3) of the I.T. Act dated 29.03.2017 received by Banking received section on 01.12.2017, so the statutory date of filing the appeal was 31.12.2017. That Miss Kakoli Mallick, Chief Manager, Taxation was misplaced the order and totally forgotten about the said order while he kept it in his personal drawer, then she was on leave and engaged for self marriage. After joining the work she was transferred in regional Banking office. New chief Manager Sri Rakesh Agarwal joined and when he calculated interest with receiving refund voucher, he found the said order laying in the drawer on 5.7.2018. Then bank auditors has calculated the refund at the time of bank audit and stated that the A.O has not proper calculated on refund interest and contacted Sri Soumitra Choudhury, Advocate who advised us to file the appeal immediately along with the delay Condonation petition and appeal is ready for filing but error occurred in IT Podal appeal filing section. That the total delay is for 397 days which may kindly be condoned. That the prayer of the appellant may kindly be accepted and the delay be condoned for the end of justice, moreover, there are substantial merits in the appeal."

8. Pertinent to mention here is that an additional affidavit of Mr. M. Nanda Kumar, AGM (Taxation). Punjab National Bank, in which the assessee, United Bank of India stands merged, has been filed wherein these aforesaid facts have been deposed further to be correct as per the knowledge and belief of the deponent Mr. M. Nanda Kumar, AGM (Taxation).

9. After taking into consideration the impugned order it appears that Ld. CIT(A) had focused more citing the law than consider the facts, while the question of limitation as a mixed question of fact and law requires to see if there is a plausible explanation or delay. The reasons cited on behalf of the assessee which is a public sector bank cannot be brushed away by observing that the reasons cited are totally implausible and far-fetched. A prudent man's approach in considering the reasons based on sequence of events and facts, cannot be made basis to discredit the reasons. The assessment proceedings are not a contest between two equal parties so the law of limitation needs to be applied liberally in

case of revenue matters. The reason cited on face are not vague or misleading calling for substantiation, as sought by Ld. CIT(A).

10. Thus, the Bench is of the considered opinion, Ld. CIT(A) has fallen in error in not allowing the condonation of delay. The impugned order to that extent is set aside. The issue on merit is restored to the file of ld. CIT(A) to decide the same on merits and needless to say, that reasonable opportunity of hearing be given to appellant.”

9. Accordingly, following the aforesaid precedent, we are of the view that the Ld. CIT(A) has fallen in error in not allowing the condonation of delay and the issue on merit is restored to the file of ld. CIT(A) to decide the same on merits and needless to say, that reasonable opportunity of hearing be given to the assessee.

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

Order pronounced in the open court on 26th April, 2023.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; 26.04.2023

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi