

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.374/M/2023
Assessment Year: 2013-14**

Shri Bharat Natwarlal Joshi, A-202, Shamnirmal, Narsing Lane, S.V. Road, Malad West, Mumbai – 400 064 PAN: ABJPJ7275J	Vs.	Asst. Commissioner of Income-tax, Circle (30), Kautilya Bhawan, Bandra Kurla Complex, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ravikant Pathak, A.R.
Revenue by : Shri Chetan M. Kacha, D.R.

Date of Hearing : 17 . 04 . 2023
Date of Pronouncement : 27 . 04 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the appellant, Shri Bharat Natwarlal Joshi (hereinafter referred to as 'the assessee') that there is a delay of 44 days in filing the present appeal and sought to condone the same on the grounds inter-alia that return of income filed by the assessee was subjected to scrutiny and the notices received by the assessee under section 143(2) and 142(1) of the Income Tax Act, 1961 (for short 'the Act') were handed over to the chartered accountant for

preparing and submitting reply; that the assessment order under section 143(3) was passed wherein it was stated that various notices were issued to the assessee but he has not replied the same; that assessee duly informed his chartered accountant who has told that due to his bad health and old age he could not file the reply; that the chartered accountant has even failed to file the appeal before the Ld. CIT(A) due to his old age and ill health; that since the assessee is an individual taxpayer he does not have regular office and staff who could check the mails and communication from the income tax department; that the assessee is also a senior citizen not familiar with digital process of checking emails on online portals; that due to ill health and old age the appeal could not be filed by the chartered accountant earlier engaged by the assessee, hence the delay of 44 days.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the fact that from the averments made by the assessee in the application for condonation of delay supported with an affidavit delay is attributed to the chartered accountant who has not filed the appeal within time but has also failed to plead the case of the assessee before the Assessing Officer (AO) as well as the Commissioner of Income Tax (Appeals). Negligence or inadvertent mistake on the part of the chartered accountant

concerned cannot be attributed to the assessee, thus we find sufficient cause to condone the delay of 44 days.

4. Keeping in view the facts thrashed in the preceding paras and in view of the law laid down by the Honourable Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) wherein it is held that “it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non deliberate delay,” the delay of 44 days in filing the present appeal is hereby condoned and present appeal is ordered to be registered and heard today by the Bench.

5. The assessee by filing the present appeal, sought to set aside the impugned order dated 28.10.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2013-14 on the grounds inter-alia that :-

“1. On the facts of the appellant's case and in law, learned Commissioner of income tax, Appeals, National Faceless Appeal Centre erred in dismissing the appeal of the appellant ex-parte and without considering the fact that online notices sent by him have reached the appellant or not. He also erred in concluding that the appellant was not interested in pursuing the appeal filed before him by the appellant.

2. On the facts of the appellant's case and in law, learned Commissioner of Income tax, Appeals, National Faceless Appeal Centre erred in confirming the additions of Rs. 75,81,000 on account of loans taken by the appellant and ad-hoc addition of Rs. 21,53,367 out of the expenses claimed during the year ignoring the fact that accounts of the appellant were audited and audit reports in the Form 3CA and 3CD were submitted along with the income tax return.

3. Appellant craves leave to add, amend withdraw any of the above grounds of appeal on or before the date of hearing.”

6. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : return of income filed by the assessee was subjected to scrutiny. In response to the notice issued by the AO the assessee filed copy of audit report and balance sheet but failed to furnish books of account/bills/vouchers, bank statement etc. Consequently the AO proceeded to treat the unsecured loan of Rs.75,81,000/- availed of by the assessee as unexplained and added the same to the total income of the assessee. The AO also made adhoc disallowance of Rs.21,53,367/- being 25% of Rs.86,13,468/- claimed by the assessee as expenses and thereby framed the assessment under section 143(3) of the Act.

7. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal ex-parte due to non prosecution by the assessee without deciding the merits of the case. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

8. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

9. Bare perusal of the order passed by the Ld. CIT(A), particularly para 4.1 goes to show that the Ld. CIT(A) claimed to

have issued 3 notices to the assessee but the assessee has failed to appear.

10. On the other hand, it is the case of the assessee that he being an old and a non tech-savvy person could not check the e-portals on which notices were sent thus could not file the submissions.

11. We are of the considered view that no doubt notices were issued to the assessee but for the cause of substantive justice one more opportunity is required to be given to the assessee to pursue his appeal. Even to decide the issue once for all and to stop the multiplicity of the proceedings every issue needs to be decided on merits. So the impugned order passed by the Ld. CIT(A) is hereby set aside and remitted back to the AO to decide afresh after providing adequate opportunity of being heard to the assessee. Because even before the AO the assessee has not filed complete details for the expenses claimed and unsecured loan availed.

12. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.04.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 27.04.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.