

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI ABY T.VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकरअपीलसं/I.T.A. No.2386/Mum/2022
(निर्धारणवर्ष/Assessment Year: 2019-20)

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| Elbe SBL IFMR Capital - 2017 Asian Building, Ground Floor, 17, R. Kamani Marg, Ballard Estate, Mumbai-400 001 | <u>बनाम</u> Vs. | Assistant Commissioner of Income (TDS) 1 (2) MTNL Telephone Exchange Building, Cumballa Hills, Pedder Road Mumbai-400 026 |
| स्थायीलेखासं./जी. आइ. आर. सं./PAN/GIR No: .AAATE8274A | | |
| अपीलार्थी/ Appellant | .. | प्रत्यर्थी/ Respondent |

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| Assessee by: | Shri Niraj Sheth |
| Revenue by: | Shri P. Suresh |

सुनवाईकीतारीख/Date of Hearing : 08/03/2023
घोषणाकीतारीख/Date of Pronouncement : 26/04/2023

आदेश / ORDER

PER: ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax Appeals-NFAC, dated 30.07.2021 for assessment year 2019-20.

2. At the outset, the Ld. Authorised Representative (Ld.AR) of the assessee pointed that there is a delay in filing of appeal before this Tribunal. According to him, the delay caused was mainly due to the pandemic due to Covid-19 restrictions placed by the State Authorities. The Ld. AR pointed that the impugned order passed by the NFAC/Ld.CIT(A) was dated 27.02.2021 (in the midst of Covid-19 pandemic). According to him, the Hon'ble Supreme Court



suo-moto in the light of Covid-19 has extended the time of limitation up to 28th February, 2022 and given further grace period of 90 days, meaning up to 31 May, 2022. So, he pleaded that delay caused to file appeal on time be condoned. According to him, in this case, the assessee had filed the appeal before the Tribunal on 28.09.2022, so excluding the period of time as ordered by the Hon'ble Supreme Court, there is a delay of 114 days in filing the appeal. To support the aforesaid averments, the assessee has filed an affidavit of the authorised person to represent the assessee trust (Shri Mehal Parikh, Assistant Vice-President, and Authorised Signatory of the trust by resolution of the trust) wherein, though it has been acknowledged that impugned order was in the Email account of the assessee on 28th July, 2021, but due to pandemic, the employees were not attending the office and therefore, inadvertently, the impugned order could not be downloaded and necessary action could not be initiated to file the appeal on time; and the delay caused was not deliberate; and therefore, for the interest of justice, he pleaded that the assessee's appeal may be admitted. After hearing both the parties and after perusal of the affidavit of the Authorised Signatory, we are inclined to condone the delay of 114 days for filing of this appeal and admit this appeal for hearing.

3. The Ld. AR assailing the action of the Ld. CIT(A) brought to our notice that the Assessing Officer (AO) had passed the order u/s 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on 03.02.2020 i.e. when Covid-19 pandemic had just begun to spread; and even though the assessee prayed before the Ld. CIT(A) to grant adjournment *sine die* till the pandemic is over, the Ld. CIT(A) has passed the impugned order ex-parte qua assessee on 13.07.2021(without hearing the assessee). According to the Ld. AR, the assessee wanted to file written submissions as well as additional evidence before the Ld. CIT(A) which they could not do because they were not aware of

the notice of hearing, since its office was not functioning due to lockdown imposed by the State Government. The Ld. AR also brought to our notice that the assessee had filed additional evidences in this appeal (which is filed before us at page no. 116 to 248 of the Paper Book) and has filed also an application for admission of additional evidences. It is noted that the assessee has filed the following additional evidences which are as under:

- *Memorandum of the Assessee/Appellant; and*
- *Trust Deed*

According to Ld. AR through these documents inter alia it intends to establish that the Originator (i.e. the seller NBFC) had not subscribed to any Pass through certificates ('PTCs') issued by the Appellant. To meet the minimum retention requirement ('MMR') as specified in the guidelines issued by the Reserve Bank of India on securitisation transactions dated August 21, 2012, the originator had provided cash collateral along with provision of over collateralisation (instead of subscribing to the PTCs) and the same is evidenced in the information memorandum of the Appellant. Accordingly, the Trust Deed provides the list of investors in the trust (refer page no. 242 of the paper book) which clearly points out that the Originator is not an investor in the trust.

And since the appellant/assessee could not adduce the above fact and submit documents referred above for the reason that the issue in this appeal arose pursuant is a survey conducted by department and similar assessment proceedings were simultaneously initiated for about 150 cases. All these trusts were managed by a singled trustee and the trustee was amidst meeting various tax officers for explaining the matter to them and filing detailed written submissions. Considering such high quantum of cases all of which were happening towards the close of the financial year, the Appellant/Assessee could not produce the Information Memorandum and the Trust Deed to the AO during the assessment proceedings.

With regard to the appeal proceedings before the Ld. CIT(A), the matter was taken up for hearing during the months of February, March and July 2021. Initially, the Appellate responded mentioning that it was contemplating settling the matter under the Vivad Se Vishwas Scheme and sought adjournment. Eventually, a decision was taken not to settle the matter under the said scheme and when the subsequent notices were issued by the Ld. CIT(A), the 2nd Wave of Covid-19 pandemic was prevailing. The Appellant requested for a sine die adjournment before the Ld. CIT(A). The Ld. CIT(A) did not grant the adjournment and decided the matter ex-parte. The Appellant thereby did not get the opportunity to file any written submissions and submit any documentary evidence in support of its stand before the Ld. CIT(A).



According to Ld. AR the additional evidence i.e. Information Memorandum and Trust Deed are vital documents to evidence that the Originator is not an investor and may be critical in deciding the appeal.”

4. Per contra, the Ld. Departmental Representative (DR) does not object to the admission of the aforesaid additional evidences but according to him, the Ld. CIT(A) didn't get an opportunity to adjudicate the issues raised in the ground of appeal on the basis of additional evidences. Therefore, he prayed that the appeal be restored back to the file of the Ld. CIT(A) for fresh adjudication.

5. Having heard both the parties and after perusal of the records, we note that the assessee has filed additional evidences before us viz, memorandum of the assessee/applicant and the trust deed which is relevant for adjudication of the issues raised by the assessee; and it is noted that the assessee could not file the same before the AO because pursuant to the survey operation, hundred and fifty (150) cases of trust which were managed by the trustee were undergoing assessment together. Therefore, the assessee could not file the relevant documents in this case before the AO, which resulted in him taking adverse view against the assessee. Before the Ld. CIT(A), the assessee had sought adjournments *sinedie* due to Covid-19 pandemic. However, the Ld. CIT(A) ignored the plea and proceeded to pass the impugned order, which resulted in assessee not able to plead its case. And the assessee could not file the additional evidence before the First Appellate Authority. Therefore, from the facts and circumstances noted supra, we find reasonable cause for the assessee not to have filed the additional evidence before the AO/CIT(A). Therefore, we admit the aforesaid documents (additional evidences) placed at page no 1016 to 2048 of the Paper Book; and set aside the impugned order of Ld. CIT(A) and restore the appeal back to the file of Ld. CIT(A) with a direction to call for the remand report if necessary and adjudicate the grounds of appeal raised by the assessee in the light of additional evidence and in terms of section 250(6) of the Act. The



assessee is at liberty to file written submissions/documents to support its claim and the Ld. CIT(A) to pass reasoned order in accordance to law.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 26/04/2023.

Sd/-

(OM PRAKSH KANT)

ACCOUNTANT MEMBER

Sd/-

(ABY T. VERKEY)

JUDICIAL MEMBER

मुंबई/Mumbai

दिनांक/Date 26/04/2023

Mahesh R. Sonavane

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि ,आयकरअपीलीयअधिकरण ,मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार / (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai**