

IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER
ITA No.913/Mum/2023
(A.Y. 2012-13)

Shri Ramchandra Dhopeswarkar, 404/11J Neelam Nagar CHS, Phase II, Gavan Pada, Mulund (E), Mumbai – 400081	Vs.	International Tax Ward 2(1)(1) Room No. 1724, 17 th Floor, Air India Building, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AFRPD9868F		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Soumendu Kumar Das

Date of Hearing	08.06.2023
Date of Pronouncement	13.06.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal is filed by the assessee against the order passed by the ld. CIT(A)-56, Mumbai, dated 15.01.2023 for A.Y. 2012-13. The assessee has raised the following grounds before us:

- “1. *On the facts and in the circumstances of the case, the order of the Commissioner of Income Tax (Appeals)-56, Mumbai, is bad in law on various grounds apart from being passed in gross violation of principles of natural justice.*
2. *The Commissioner (Appeals) erred in dismissing the appeal in limine on the alleged ground of delay in filing the appeal without giving any opportunity and without appreciating the fact there is delay in filing the appeal is factually incorrect.*
3. *On the facts and circumstances of the case and in law the CIT(A) has erred in not dealing with the grounds of appeal raised before him despite receiving the remand report from the ld. AO.*

4. *Without prejudice to ground No. 2 the CIT(A) and assuming but not admitting even if there was delay as has been envisaged the ld. CIT(A) should have condoned the same since the appellant had received / come to know of such the order only on the date mentioned in form No. 35 and if that be the case there is no delay as such.*

The appellant craves right to add, amend, alter, modify or substitute any or all the grounds of appeal at the time of hearing.”

2. Fact in brief is that the assessee has not filed return of income for assessment year 2012-13. On perusal of the NMS Module and AIR report the assessing officer noticed that assessee has entered into the following transactions:

- “1. Cash deposits of Rs.4,66,676/- in HDFC Bank Ltd.
2. Receipt of Rs.6,780/- as per 26AS”

3. To verify the source of cash deposited the assessing officer has reopened the case of the assessee by issuing of notice u/s 148 of the Act on 28.03.2019. The assessing officer stated that in spite of providing opportunity the assessee has not made compliance during the course of assessment proceedings therefore, the assessment was completed u/s 144 of the Act. The assessing officer treated the cash deposited in the bank account of HDFC amounting to Rs.4,66,676/- as unexplained money u/s 69A of the Act and taxed made u/s 115BBE of the Act.

4. The assessing officer also noticed that assessee has received an amount of Rs.6781/- from HDFC bank on the same TDS was deducted. Therefore, this amount of Rs.6781/- was added to the total income of the assessee under the head income from other sources.

5. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) held that there was a delay of 57 days in filing the appeal, therefore, the appeal was dismissed.

6. Heard the ld. D.R and perused the material on record. Before the ld. CIT(A) the assessee has filed appeal for assessment year 2012-13 in form no. 35 on 26.02.2020. The assessee has submitted before the ld.

CIT(A) that notice on demand and the assessment order was actually served on him on 29.01.2020, however, the ld. CIT(A) has rejected the submission of the assessee stating that assessee has not provided any proof of service of notice and assessment order on 29.01.2020. In this regard, we have perused the copy of form 35 filed by the assessee before the ld. CIT(A) the assessee has categorically stated in his submission before the ld. CIT(A) that he has not received any notice or communication in receipt of his assessment till 24.01.2020. The assessee had come to know about the notice of income tax proceedings after his bank informed that the income tax department had issued notice to freeze bank accounts in respect of outstanding demand. The assessee also explained that he is a non-resident and the account number mentioned in the assessment order is categorised as NRE (Non-resident External Account) by the bank. As per the banking norms no cash/cheque in the Indian currency can be deposited into the said bank account and the credit can be only by way of remittance from outside India in currency other than Indian rupees. The assessee has also provided copy of bank statement to the ld. CIT(A) showing that all the entries in the bank account were other than the Indian rupees.

7. Looking to the above facts and circumstances we find that neither the ld. CIT(A) has disproved the reasons provided by the assessee for marginal delay in filing this appeal before the ld. CIT(A) nor he has called any report from the assessing officer to prove contrary to the fact reported by the assessee that he has received the assessment order and notice of demand only on 24.01.2020. In view of the above facts and circumstances, we find that decision of ld. CIT(A) of dismissing the appeal of the assessee on account of delay of 57 days is not justified. The ld. CIT(A) ought to have adjudicated the issue contested in appeal on merit as contemplate under section 250(6) of the Income Tax Act. Therefore, we restore this case to the file of the ld.

CIT(A) for deciding on merit after affording opportunity of being heard to the assessee. Accordingly, this appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 13.06.2023

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 13.06.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.