

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1197/MUM/2023
Assessment Year: 2011-12

Mr. Jerry John Mendonca,
Flat No. 102, Concrete Heritage,
1st floor, Waroda Road, Bandra
(W), Mumbai-400050.

PAN NO. ARMPM 1129 P
Appellant

ITO Ward-23(2)(1),
Aayakar Bhavan, Maharshi
Vs. Karve Rd. New Marine Lines,
Churchgate, Mumbai-400020.

Respondent

Assessee by : Kinjal Bhuta
Revenue by : Ms. Indira Adakil, DR

Date of Hearing : 04/07/2023
Date of pronouncement : 10/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 18.07.2022 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12, raising following grounds:

1. *“The Ld. Commissioner of Income Tax (Appeals)- NFAC, erred in dismissing the appeal filed by the appellant without exercising best judgement. That the dismissal of appeal is against the principles of natural justice and ought to be set aside.*



2. *The Ld. Commissioner of Income Tax (Appeals)- NFAC, erred in conforming the actions of the Ld. A without appreciating that the re-assessment is bad and void in law.*
3. *Without Prejudice to the above, The Learned Commissioner of Income Tax (Appeals) erred in conforming of action of Ld. AO of charging interest us. 234A, 234B and 234C of the Income Tax Act, 1961 totalling to Rs.4,27,541/- failing to appreciate that notice us. 148 to file return of income was not received and therefore return us. 148 was not filed by the appellant.*

2. Before us, the Ld. Counsel of the assessee submitted that this appeal has been filed with a delay of 208 days. The Ld. Counsel referred to the affidavit of the assessee wherein he has submitted that the E-mail address on the Income-tax Portal was that of the ex-employer of the assessee and therefore, the assessee was not aware about disposal of the appeal by the Ld. CIT(A). Further, it is stated that the assessee being in a non-resident, he was not aware of the Income-tax appellate proceedings particularly the faceless appeal procedures. In view of the reasons for delay explained by the assessee, we are of the opinion that there is a sufficient and reasonable cause for not complying the limitation period for filing the appeal by the assessee. Accordingly, the delay in filing the appeal is condoned and the appeal is admitted for adjudication.

3. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the ground No. 1, the assessee has raised issue that appeal has been passed against the principle of natural justice and without affording



opportunity to the hearing of the assessee. However, from the record, we find that the Ld. CIT(A) has provided various opportunities to the assessee but there was no compliance on the part of the assessee. The Ld. CIT(A) in para 5.1 of the impugned order has mentioned as under:

“During the course of the appeal proceedings various notices were issue, however no compliance was made. Finally a show cause notice was issued to the appellant to substantiate its grounds of appeal. However no compliance had been made by the appellant even during the appeal proceedings. In view of the above it appears that the appellant is not interested in pursuing its appeal. Therefore the appeal is dismissed.”

3.1 Further, we note that the assessee was not even before the Assessing Officer, the Assessing Officer has noted that **firstly**, no return of income was filed by the assessee in response to notice u/s 148 of the Income-tax Act, 1961(in short the Act), **secondly**, notice u/s 142(1) of the Act dated 11.07.2018 issued along with questionnaire was also not responded, **thirdly**, a reminder on 11.09.2018 to the notice u/s 142(1) was also not responded, **fourthly**, the Assessing Officer gathered e-mail account of the assessee from the bank of the assessee and reminder was send on said e-mail ID on 30.10.2018, however said e-mail was also not responded, **fifthly**, the Assessing Officer got phone number from the bank and gathered e-mail ID of his wife and sent notices on said e-mil ID , still the assessee did not respond. Further, the Assessing Officer also issued final show cause notice providing oppournity,



however, there was no response and therefore, the Assessing Officer was compelled to pass the assessment order u/s 144 of the Act i.e. best judgment assessment.

3.2 In view of the above facts, it is evident that the assessee is non-compliant of the Income-tax proceedings before the AO as well as before the ld CIT(A). Before us, the Ld. Counsel of the assessee submitted that the assessee is willing to attend income-tax proceedings before the ld AO. He requested that the Ld. CIT(A) has passed the order *ex-parte*, therefore, matter may be restored back either to the Ld. CIT(A) or to the AO for deciding afresh. Undisputedly, the appeal has been decided *ex-parte*, without taking into consideration the submission of the assessee. But, looking to the non-compliant behavior of the assessee, we feel it appropriate to impose a cost of Rs.5,000/- on the assessee, which shall be deposited into Prime Minister Relief Fund within 30 days of the receipt of this order. Subject to deposit of the cost, we restore the issue in dispute in the appeal to the file of the Ld. Assessing Officer for deciding afresh after taking into consideration submission of the assessee on merit. The Ld. Assessing Officer before commencing the assessment proceedings will verify whether the assessee has complied to the direction regarding deposit of cost imposed. The ground No. 1 of the appeal is accordingly allowed. The ground No. 2 and 3 of the appeal are also accordingly allowed for statistical purposes.



4. In the result, the appeal filed by the assessee is allowed for statistical purposes with above terms.

Order pronounced in the open Court on 10/07/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/07/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai