

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**(VIRTUAL COURT)**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 191/Asr/2023**  
Assessment Year: 2012-13

Sh. Khurshid Ahmed Wani  
S/o Gulam Mohd. Wani  
R/o G-2, Coop. Colony,  
New Airport Road, Peerbagh  
Srinagar- 190014

[PAN: ABAPW 1773H  
**(Appellant)**

**V.** Income Tax Officer,  
Ward, Srinagar Aayakar  
Bhawan, Chinar Complex,  
Lal Mandi, Srinagar - 190008

**(Respondent)**

Appellant by Sh. Joginder Singh, CA

Respondent by Sh. Rajiv Wadhwa, Sr. DR

Date of Hearing : 24.07.2023  
Date of Pronouncement : 26.07.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order of the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi dated 25.03.2022 in respect of Assessment Year 2012-13 challenging therein the

action of the Id. CIT(A) in confirming the ex-parte assessment order passed by the AO u/s 144/147 of the Income Tax Act, 1961 without granting adequate opportunity of being heard to the assessee against the principle of natural justice.

2. There was a delay in filing of the appeal of 399 days. The appellant assessee has explained that the delay in filing of the appeal has been due to non service of the impugned order issued by the Id. CIT(A) as the appellant is non-resident doctor by profession staying in Saudi Arabi since 1990. In support of the condonation application, the Id. AR has filed a written application with the support of an affidavit placed on record dated 24.07.2023 which reads as under:

*“The assessee is doctor by Profession and Non-resident Indian residing abroad since 1990. The assessment for the year under consideration was completed under section 144 read with section 147 of the Income tax Act, 1961, vide order dated 04.12.2019 by the Income tax Officer, Ward 3(2), Srinagar. Due to non receipt of notices by the assessee, the Ld. A.O. has made assessment u/s 144 r.w.s. 147 of the Act and passed ex-parte order. Thereafter, the appeal was filed before the Ld. CIT(A). Since the assessee was resides abroad, the notices were sent at the Indian address/ email by the National Faceless Appeal Centre, which were not assessable to the assessee at abroad. The Ld. CIT(A) also passed the ex-parte order and same was uploaded on e-portal.*

*The assessee came to know only when the notice for attachment was issued and his relative informed him about the same. Thereafter, the assessee immediately downloaded the order and filed appeal before the Hon'ble Tribunal. The assessee also filed an affidavit in support of his petition that he is NRI and had not received the order in time. Thus the assessee had sufficient cause not to*

*file the appeal in time and on these facts the present petition may be allowed. Useful support is also drawn from the case of Dr.S.A.Rashid, Kulgam, Kashmir versus ITO Ward, Anantnag Kashmir in ITA No.632/Asr/2015 for the assessment year 2002-03 wherein the Hon'ble Bench while condoning the delay of 932 days, placed reliance on the decision of Hon'ble Supreme Court decision in the N. Balakrishnan versus M. Krishmaruity, AIR 1998 SC 3222 wherein it has been held:-*

*"Rules of limitation are not meant to destroy the right of the parties. They are meant to see that the parties do not resort dilatory tactics but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury.*

*Respectfully relying on the decision of the Hon'ble Apex Court, we consider the petition for condonation of the delay for 932 is condoned.*

*In view of the above decision, it is humbly prayed that the delay in filing of appeal may kindly be condoned."*

2.1 Considering the bonafide reason for delay in filing appeal, duly supported with affidavit, the delay of 399 days in filing appeal is hereby condoned and appeal is admitted on merits for adjudication.

3. At the outset, the Id. counsel for the assessee has submitted that the assessee is a non-resident doctor staying in Saudi Arabi and he has not filed return of income as appellant has not been earning any income in India. The Id. AO on the basis of CIB/AIR information alleged that the appellant has made investment in purchase of Flat amounting to Rs.7,90,000/- in Horizon Construction, Jammu and accordingly, issued notice u/s 148 of the I.T. Act. The AO has passed an order ex-parte qua the assessee u/s 144/147 of the Act with addition of Rs.7,90,000/- vide order

dated 04.12.2019 against the principle of natural justice. He further submitted that the Id. CIT(A) NFAC, Delhi has also passed appellate order ex-parte qua the assessee dismissing the appeal without affording adequate opportunity of being heard to the appellant. He pleaded that the matter may be remanded back to the AO to pass denovo assessment order after granting adequate opportunity of being heard to the assessee. He undertakes that the assessee cooperate in the proceedings before the Assessing Officer.

4. Per contra, the Id. DR relied on the impugned order. However, he failed to rebut the contention raised by the Id. counsel that the appellant was a non-resident doctor and neither of the notices issued by the Assessing Officer or by the Id. CIT(A) and the impugned order was served on the appellant assessee being a non-resident doctor living in Saudi Arabi since 1990.

5. We have heard the rival contention, perused the material on record and the impugned orders. Admittedly, the AO and the Id. CIT(A) has passed the orders ex-parte qua the assessee without mentioning the factum of date of service of the notices to the effect of granting an opportunity of being heard to the assessee in view of the principle of

natural justice. We, therefore, consider it deem fit to remand back the matter to the file of the AO to pass the assessment order denovo after granting adequate opportunity of being heard through proper services of notice on the assessee. The AO is directed to make sure to issue a show cause notice to the appellant assessee to bring in notice of the assessee the proposed additions before passing the assessment order. At the same time, the assessee is directed to cooperate in the assessment proceedings before the AO by filing the requisite information and documents called for examination during the course of scrutiny proceedings for the completion of the assessment. Accordingly, the matter is restored back to the file of the AO.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 26.07.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)

(5) The DR, I.T.A.T.

True Copy  
By Order