

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1141/Mum/2023
(A.Y. 2017-18)**

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| Shri Sanjay Mukund Paithankar, C/o Warde & Shah, Chartered Accountants, 1201, Regent Chambers, J.B. Marg, Nariman Point, Mumbai – 40021 | Vs. | Income Tax Officer, Ward – 3(3)(1), Room No. 1631, 16 th Floor, Air India Building, Nariman Point, Mumbai, Maharashtra 400 021 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ARWPP8732F | | |
| Appellant | .. | Respondent |

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|-----------------|-------------|
| Appellant by : | Hitesh Shah |
| Respondent by : | None |

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| Date of Hearing | 03.07.2023 |
| Date of Pronouncement | 12.07.2023 |

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal is filed by the assessee against the order passed by the CIT(A)-57, Mumbai, dated 16.02.2023 for A.Y. 2017-18. The assessee has raised the following grounds before us:

“The Hon. CIT(A) was not justified in rejecting the prayer for condonation of delay. The Hon. CIT(A) ought to have appreciated the fact that the appellant could not submit the required details due to circumstances beyond his control. The Ld. A.O. was not justified in adding accretion to the LIC policy of Rs.28,95,140/-, U/S.56 of the Act. The Ld. A.O. erred in adding the cash deposits of Rs.49,46,000/-without appreciating the facts and circumstances of the case.”

2. Fact in brief is that the assessee is a non-resident doctor by profession. The assessee has not filed return of income for assessment year 2017-18. On the basis of information collected as per the data available of AIR, CIB and TDS statement the assessee has made various transactions totalling to Rs.36,44,09,651/- during the relevant assessment year. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 31.03.2021. During the course of assessment the assessing officer noticed that assessee has invested Rs.44,00,000/- in the LIC policy for 10 years in growth scheme and the policy was surrendered on 20.09.2016 thereby assessee had received surrender value of Rs.72,95,140/-. During the course of assessment the assessee has not filed any explanation, therefore, the assessing officer has added the amount of Rs.28,95,140/- (Rs.72,95,140 (-) Rs.44,00,000/-) to the total income of the assessee.

3. During the course of assessment the AO also noticed that assessee has made cash deposits of Rs.49,46,000/- in his bank account. Since, the assessee has not filed any detail regarding source of aforesaid cash deposit, therefore, the assessing officer has treated the said amount as unexplained money u/s 69A of the Act.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee without adjudicating the issue on merit on the ground that there was a delay of 9 days in filing the appeal before the ld. CIT(A).

5. During the course of appellate proceedings before us the ld. Counsel submitted that assessee is a non-resident and a doctor by profession who has been practising in UAE for the last 3 decades. The ld. Counsel submitted that in response to the notices issued by the assessing officer the assessee had submitted detailed replies on 27.01.2022, 18.12.2022 and 08.03.2022 respectively. During the

course of assessment the ld. Counsel of the assessee has sought more time to furnish the required information because assessee was residing outside India, however, without giving further time the AO has passed the assessment order. The ld. Counsel further submitted that because the assessee was residing outside India therefore the assessee could not check the status of his case which resulted delay in filing the appeal by 9 days.

On the other hand, the ld. D.R supported the order of lower authorities.

6. The ld. CIT(A) held that delay of 09 days in filing the appeal is not condoned and the appeal is dismissed. After considering the explanation of the assessee we observe that there is a bonafide reason for marginal delay of 9 days in filing the appeal before the ld. CIT(A) as the assessee could not check the status of his case since he was residing abroad. We consider that the ld. CIT(A) is not justified in dismissing the appeal without adjudicating the additions made on merit as laid down in section 250(6) of the Income Tax Act. In spite of the fact that the impugned additions were made at the time of assessment stage without considering the submission of the assessee which could not be filed before the passing of the assessment order as more time sought was not granted by the AO. Section 250(6) of the I.T Act contemplates that the ld. CIT(A) would determine point in dispute and therefore, record reasons on such point in support of his conclusion. The ld. CIT(A) has failed to determine those point and record detailed finding. The decision of the ld. CIT(A) for dismissing the appeal of the assessee without condoning marginal delay of 9 days is not justified, therefore, we direct the ld. CIT(A) to adjudicate the appeal of the assessee on merit after providing adequate opportunity to the assessee. Therefore, the ground of appeal of the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.07.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 12.07.2023

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.