

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1829/Mum./2023**

**(Assessment Year : 2012-13)**

Munira Faiyaz Ratangiri

32, Mistry Building, Gun Powder Road

Mazgaon, Mumbai 400 010

PAN – AIAPR4999K

..... Appellant

v/s

Income Tax Officer

Ward-20(2)(1), Mumbai

..... Respondent

Assessee by : Shri Dalpat Shah

Revenue by : Smt. Mahita Nair

Date of Hearing – 07/08/2023

Date of Order – 08/08/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 24/01/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2012-13.

2. The present appeal is delayed by 58 days. As per the assessee, the impugned order dated 24/01/2023 was received on the same date. Therefore, as per section 253(3) of the Act, the appeal before the Tribunal was required to be filed within 60 days from the date of receipt of the impugned order.

However, as evident from the record, the assessee filed the appeal on 22/05/2023. In the affidavit seeking condonation of delay, filed along with the appeal, the assessee submitted that her father has been diagnosed with cancer and her mother-in-law and father-in-law are also not keeping well due to ill-health and she had to take care of the medical treatments. In support of her claim, the assessee has also furnished copies of medical reports of family members. It is further submitted that she is not aware of the tax laws nor due dates of tax compliance for filing any appeal and her earlier tax consultant has retired from his profession and she has recently appointed a new tax consultant to attend to her tax matters. Due to the aforesaid circumstances, the assessee has claimed that the present appeal is delayed by 59 days and requested for condonation of same.

3. On the other hand, the learned Departmental Representative (*'learned DR'*) vehemently opposed the condonation of delay in filing the appeal.

4. Having considered the submissions of both sides and perused the material available on record, we find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of *Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387*. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, nothing has been brought on record to show that the assessee shall stand to benefit by late filing of the present appeal. In view of the above and having

perused the submissions made in the affidavit filed by the assessee, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore we condone the delay in filing the appeal by the assessee and we proceed to decide the appeal on merits.

5. In this appeal, the assessee has raised the following grounds:-

*"1. Ex-Parte order by CIT(Appeal)*

*1.1 On the facts and circumstances of the case and in Law, the C.I.T. (Appeal) - National Faceless Appeal Centre erred (NFAC) in passing an Ex-Parte order U/sec. 250 on 24.01.2023 and conforming the addition made of Rs.1,50,98,640/- ignoring the fact that there was a genuine and bonafide reason of not submitting submissions and documents as the appellant was passing through a difficult time since her father was detected throat cancer and was to be taken for Chemo therapy and her Mother-in-law and Father-in-law were also keeping ill-health due to old age and the appellant was the person to take care of their medical treatments.*

*1.2 The appellant plea to restore the appeal back to the CIT(A)-NFAC for fresh adjudication of the appeal in the interest of justice.*

*WITHOUT PREJUDICE ON MERIT*

*2. Addition of Rs.1,50,98,640/- as Business Income*

*2.1 The said CIT(A) erred in confirming the addition of Rs.1,50,98,640/- being total of purchase and sale value of equity shares as business income on the ground that the appellant had indulged into cross trading' in securities on Bombay Stock Exchange without giving any documentary evidences ignoring the fact that the appellant had suffered a loss of Rs.80,509/- from trading in more than sixty scripts.*

*2.2 Without Prejudice, the said CIT(A) erred in holding transactions in all the scripts as 'cross trading and confirming the said addition ignoring the fact that the appellant was not indulged in any cross trading' transaction as the BSE had also released the capital gain amount of Rs.40,765/- in one script 'Asian Hotels Ltd' which was blocked after holding the said transaction as genuine transaction.*

*2.3 Without Prejudice, the said CIT(A) also erred in confirming the said addition of Rs.1,50,98,640/- which is total of sale and purchase value ignoring the fact that the total of sale value was Rs.74,01,690/- only and also erred in ignoring the fact that the appellant had suffered a loss of Rs.80,509/- after reduction of cost of purchases from the said sale value.*

2.4 The said CIT(A) erred in confirming the said addition ignoring the fact that the AO had made addition on the presumption of said consideration of Rs.1,50,98,640/- was received by the appellant when no such consideration was received by the appellant which was established by bank statement furnished with ledger Account of share broker.

3. Interest U/sec 234

The said CIT(A) also erred in confirming interest levied U/sec 234 when no such interest can be chargeable.

The appellant craves leaves to add, amend, alter, modify, delete and/or change all or any of the above grounds on or before the date of hearing.”

6. The brief facts of the case as emanating from the record are: The assessee is an individual and for the year under consideration filed her return of income on 28/09/2013 declaring a total income of Rs. 54,430. Subsequently on the basis of the information received from the DDIT (Investigation), Unit 6(1), Mumbai that the assessee has indulged in the activity of cross trading, and the assessee has done huge transactions, however, no details pertaining to the same were provided, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued to the assessee on 31/03/2019. On the basis of the information, it was observed that the assessee has sold the shares of Rs. 1.5 crores and more. The assessee did not comply with the aforesaid notice within the time limit and the notices remain unattended. The assessee was again requested to comply with the notice issued under section 148 of the Act. However, the assessee did not turn up and failed to file the return of income. Meanwhile, notice under section 133(6) of the Act was issued to the Bombay Stock Exchange and detailed data regarding the said transaction made by the assessee, during the year under consideration, was called for. During the proceedings under section 147 of the Act, the assessee filed a letter submitting that since there was a loss in dealing

in shares the assessee was unaware of showing the same while filing the return as this being the first year when she dealt in shares. Since the assessee failed to file the return of income, therefore, the Assessing Officer completed the assessment under section 144 of the Act. On the basis of the data received from the Bombay Stock Exchange, the Assessing Officer observed that the assessee has traded in various scripts and sold shares of various companies during the year under consideration, however, no loss of income was declared by the assessee in the return of income and no details in respect of the purchase and sale of shares have been provided. It was also observed that the assessee has failed to produce the details of the source of funds for the purchase of the said shares and no contract notes, DEMAT account, or bank statement has been filed by the assessee. Accordingly, vide order dated 27/12/2019 passed under section 144 read with 147 of the Act, the Assessing Officer treated the consideration received by the assessee amounting to Rs. 1,50,98,641 as business income and added to the total income of the assessee.

7. In the appeal before the learned CIT(A), despite notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 24/01/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

8. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. Now in

appeal before us, the assessee is duly represented by the learned Authorised Representative and wishes to pursue the litigation against the addition made by the AO. In view of the above, we are of the considered opinion that in the interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention that no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee on merits do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 08/08/2023

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 08/08/2023**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai