

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.1742/Mum./2023

(Assessment Year : 2010-11)

Shri Mansi Rajen Oza
2, Arvind Niwas, Carter Road no.5
Borivali (East), Mumbai 400 066
PAN – AAGPO6963I

..... Appellant

v/s

Income Tax Officer
Ward-32(2)(3), Mumbai

..... Respondent

Assessee by : None

Revenue by : Smt. Mahita Nair

Date of Hearing – 08/08/2023

Date of Order – 09/08/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 24/03/2023, 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 2010-11.

2. In its appeal, the assessee has raised the following grounds:-

"Based 1. Under the facts and circumstances of the case and in law the order passed by the Id NFAC being bad in law on various counts and that, the same should be set aside.

2. Under the facts and circumstances of the case and in law the Ld. CIT (A) NFAC has passed the order in limine without giving any opportunity to explain the alleged delay considered by him in filing the appeal by the appellant.

3. Under the facts and circumstances of the case and in law the Id. CIT(A) has violated the principles of natural justice and hence the order passed without affording any opportunity of being heard on the subject matter being ground for dismissing the appeal being bad in law and hence the order should be set aside.

4. Under the facts and circumstances of the case and in law the Id. CIT(A) NFAC has erred in not dealing with the issues raised by the appellant in the appeal memo filed by the appellant.

5. Under the facts and circumstances of the case and in law the id. CIT(A) has erred in not considering the fact that the appellant had already physically filed the appeal in the office of CIT(A) 44 within time allowed under the law and hence the order passed by the Ld. CIT(A) being bad in law and that the same should be set aside.

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

3. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. From the perusal of the record, we find that the notice issued through Registered post A/D was also returned unserved by the postal authorities. Therefore, in view of the above, we proceed to decide the present appeal ex parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

4. At the outset, we find that the learned CIT(A) dismissed the appeal filed by the assessee on the ground of delay. In the impugned order, it is noted that the notice of demand was served on the assessee on 22/03/2016, however, the assessee filed appeal before the learned CIT(A) on 14/06/2016, which is beyond the statutory time limit of 30 days. In the absence of any reasons for condonation of delay, the learned CIT(A) dismissed the appeal filed by the assessee.

5. In ground No. 5 raised by the assessee in the present appeal, we find that the assessee claimed that the appeal was physically filed before the learned CIT(A) within the prescribed time limit, which fact was ignored by the learned CIT(A) while dismissing assessee's appeal.

6. From the perusal of the impugned order, we find that the learned CIT(A) without deciding the appeal filed by the assessee on merits dismissed the same only on the basis that sufficient cause has not been shown by the assessee for condonation of delay in filing the appeal. It appears to be a case wherein the appeal before the learned CIT(A) was filed during the transition period of filing appeals from physical mode to e-filing mode after the substitution of provisions of Rule 45 of the Income Tax Rules, 1962, w.e.f. 01/03/2016 by IT (Third Amendment) Rules, 2016, and therefore all the assesseees cannot be presumed to be well-versed with the e-filing procedure. From the record, it is evident that the assessee uploaded the appeal on 14/06/2016, as per the new e-filing procedure which was introduced w.e.f. 01/03/2016. Thus, in view of the above, we are of the considered opinion that during the transition period, a lenient view should have been taken. Therefore, we direct that the delay, if any, in uploading the appeal as per the new e-filing procedure be condoned. Since the learned CIT(A) has not rendered any finding on the merits of the issues raised by the assessee, therefore, we deem it appropriate to restore the appeal to the file of learned CIT(A) for the decision on merits after hearing the parties. Accordingly, the impugned order passed by the learned CIT(A) is set aside.

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

Order pronounced in the open Court on 09/08/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 09/08/2023

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