

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 542/Kol/2023
Assessment Year: 2017-18

Tulshi Charan Roy (PAN: AEFPR 7114 F)	Vs.	ITO, Ward-1(1), Durgapur
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	19.07.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Binod Jain, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A) dated 13.03.2023 for the AY 2017-18.

2. At the time of hearing it was pointed out that there is a delay of 20 days in filing the appeal. We note that the assessee has filed condonation petition dated 25.05.2023 stating that the assessee was a salaried person with Durgapur Steel Plant, a unit of Steel Authority of India Ltd., Durgapur. It was also stated that assessee was received the appellate order on ITBA portal on 13.03.2023 and the same was handed over to the local consultant on 2.5.2023 because he was not available in the town. Thereafter the assessee's local counsel approached the senior consultant at Kolkata for filing the appeal before the ITAT. Accordingly the appeal set was prepared and filed after

signature with a delay of 20 days. After considering the rival contentions and perusing the material on record, we find that the delay is for sufficient reasons and accordingly the same is condoned and the appeal admit for adjudication.

3. The only issue raised by the assessee is against the order of Ld. CIT(A) upholding the order of AO wherein the return filed in response to notice u/s 148 of the Act was treated as non-est resulting into additions by the AO of Rs. 2,11,720/- comprising Rs. 1,54,120 on account of disallowance of claim chapter VIA and Rs. 57,600/- on account of salary.

5. Facts in brief are that the assessee filed original return of income 02.07.2017 declaring total income of Rs. 5,68,480/- which was revised subsequently declaring income of Rs. 5,05,000/- and thereby claiming refund of Rs. 43,230/- on 09.01.2018. The assessee again revised the return of income on 16.03.2019 declaring income of Rs. 6,53,110/- thereby claiming refund at the tune of Rs. 18,330/- and thereafter once more the assessee revised the return of income on 19.03.2019 with income of Rs. 6,53,110/-. The case of assessee was reopened u/s 147 of the Act on the ground that assessee has claimed excessive deduction under chapter VIA in contrast to corresponding deduction as per Form 16 issued by the employer. The notice u/s 148 of the Act dated 4.3.2020 was issued to the assessee. The return filed by the assessee on 9.9.2021. According to AO the return filed by the assessee was beyond the period of thirty days and therefore the AO treated the same as non-est. The AO framed assessment u/s 144/148 vide order dated 23.09.2021 on the ground that the return of income in response to non-est return determining two additions 57,600/- and Rs. 1,54,120/- by computing the difference of income in the original and revised return. It is pertinent to state that the refund received by the assessee was immediately deposited back as self assessment vide challan dated 29.03.2019 along with interest of Rs. 7,300/- thereby depositing back of Rs. 51,360/-.

6. The Ld. CIT(A) simply dismissed the appeal of the assessee by upholding the order of AO wherein the return filed in response to notice 148 of the Act by the

assessee was treated as non-est as it was filed more than 30 days from the date of the notice issued u/s 148 of the Act.

7. After hearing the rival contentions and perusing the material on record, we find that the case of the assessee was reopened and notice was issued u/s 148 on 04.03.2020 and the due date of filing the return being 4.4.2020 whereas the return of income was filed 9.9.2021. We find that the above period between the issuance of notice u/s 148 of the Act and actual filing of return falls within Covid period which has been directed by the Hon'ble Apex Court to be excluded from limitation period. While computing the period of return in terms of said order of Hon'ble Apex Court the period from 15.03.2020 till 28.02.2022 has been excluded for period of limitation plus 90 days from 28.02.2022 to comply with various formalities under various Acts. We have decided a similar case in favour of the assessee in ITA Nos 342 & 343/Kol/2023 for AY 2016-17 & 2017-18 dated 12.06.2023 wherein we have held that the above period has been excluded from the period of limitation. The operative part is extracted below:

"5. After hearing rival submissions of the parties and perusing the material on records, we observe that the assessee has undisputedly claimed an excess deduction under Chapter VIA in the original return filed on 15.06.2017 and claimed refund of Rs. 54,980/- which was also accordingly granted to the assessee. We note that the case of the assessee was re-opened u/s 147 of the Act by issuing notice u/s 148 of the Act on 04.03.2020. The assessee filed return of income in response to notice u/s 148 of the Act disclosing the correct income and making correct claim under chapter VIA on 09.09.2021. The said return was treated as non-est by the AO for the reasons that this was filed beyond 30 days from the date of notice issued u/s 148 of the Act which in our opinion is in violation of order passed by the Hon'ble Apex Court dated 10.01.2022 wherein the Hon'ble Court has restored the order dated 23.03.2020 and in continuation of subsequent order dated 08.03.2021, 27.04.2021 and 23.09.2021 directed that period from 15.03.2020 till 28.02.2022 shall be excluded from period of limitation as may be prescribed under general or special laws in respect of all judicial or quasi judicial proceedings. Since the assessee has filed the return on 09.09.2021 which is within the above period as directed to be excluded by the Hon'ble Apex Court, therefore, the said return shall be deemed to have been filed within due limitation. We also note that the ld. CIT(A) has failed to appreciate the issue and confirmed the penalty in a mechanical manner. No penalty is leviable on the difference of income between the return revised on 15.06.2017 and the return in response to notice u/s 148 of the Act as the assessee has returned the correct income. We also note that the assessee has deposited the refund received by depositing Rs. 55,580/- as self asstt. tax vide challan dated 25.03.2019 whereas the case of the assessee was re-opened u/s 147 of the Act on 4.3.2020. Accordingly, we are inclined to set aside the order of ld. CIT(A) and direct the AO to delete the penalty. The appeal of the assessee is allowed.

Accordingly, we set aside the issue to the file of AO with the direction to treat the return filed in response to notice u/s 148 of the Act as valid return and decide the appeal accordingly. Needless to say that the assessee has to be given fair opportunity of hearing, at the time of deciding the issue, the appeal is restored back to the file of the AO with the above direction.

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

Order is pronounced in the open court on 21st August, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 21st August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Tulshi Charan Roy, C/o, Jain Vinod K & Associates, 41A, A. J. C. Bose Road, Suite No. 613, 6th Floor, Kolkata-700017
2. Respondent – ITO, Ward-1(1), Durgapur
3. Ld. CIT(A)- NFAC, Delhi
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata