

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.3168/Mum/2022
(Assessment Year :2017-18)**

Shri Rajesh Waman Mhatre 4, Radha Niwas Near Hanuman Mandir GB Road, Near Bus Stop Waghbil Gaon Kasaryadavli Thane-400 615	Vs.	ITO Ward 3(2) Ashar IT Park 6 th Floor, Road No.16Z, Wagle Industrial Estate Thane (W)- 400 604
PAN/GIR No.AIBPM7638M		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Smt. Mahita Nair
Date of Hearing	24/08/2023
Date of Pronouncement	28/08/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 23/03/2022 passed by NFAC, Delhi for the quantum of assessment passed u/s.144 for the assessment year 2017-18.

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

“1. The CIT Appeal of National Faceless Appeal Centre has erred in not condoning the delay in submitting the Appeal and thereby erred in not admitting the appeal on record.

2. The CIT Appeal of National Faceless Appeal Centre has erred in not going through the merits of the case

3. The CIT Appeal of National Faceless Appeal Centre has erred in continuing the addition made by Assessing Officer by not condoning the delay and not admitting the appeal.”

3. Here in this case assessee is a civil contractor and mostly works for small homes and developing chawls in areas like Diva and Bhiwandi. As per the assessment order assessee has not filed any return of income for A.Y.2017-18. Based on information available in AIMS module, it was informed that during the demonetization period assessee has deposited cash aggregating to Rs.32,10,000/- in his bank account with TJSB Sahakari Bank Ltd, Kavesar, Thane. The ld. AO has noted that during the period 09/11/2016 to 31/12/2016 that as per the list gathered by the Income Tax department about the persons who have deposited cash during demonetization period but have not filed the return of income, assessee was one of them, whose name was mentioned in high value cash transaction. Accordingly, notice u/s.142(1) dated 30/11/2017 was issued by ITO Ward (3), Thane to file the return of income. According to AO, assessee did not file the return of income nor responded to any of the notices sent online. Accordingly, the ld. AO completed the assessment

u/s.144 and added the entire cash deposit of Rs.33,55,000/- requested in the bank account u/s.69A r.w.s. 115BBE.

4. Ld. CIT (A) found that there was a delay in filing of the appeal and the reasons mentioned for the delay was that, assessee was not aware of any assessment order being passed against him *exparte* and he was not even aware of the notices issued by the ld. AO and therefore, it remained unattended. It was further submitted that assessee is a small time contractor and he was not aware of any on line formalities or requirements of visiting the ITB portal and taking any income tax updates. However, the ld. CIT (A) held that “ignorance of law is no excuse” and accordingly, he dismissed the appeal being barred by limitation.

5. From the perusal of the records, it is seen that the ld. AO has mentioned that the various notices were sent to the assessee however none of the notices remain complied with. Not only that, assessee had not even received the assessment order which was passed *exparte* against him. It appears that assessment order and was sent through ITB portal on 17/10/2019 and the appeal was filed before the ld. CIT (A) on 13/12/2020. Even the notices sent from the office of the NFAC centre, assessee has not responded. Since all the notices have been sent through e-mail and through online portals and assessee being a small contractor was not aware of such procedures nor he had any Chartered Accountant or any authorised representative to guide him. For this reason alone all the notices and even the assessment order which was uploaded in the ITB portal assessee was not aware of

any such proceedings. In the grounds, reasons for condonation of delay in filing of the appeal assessee had stated before the Id. CIT (A) was as under:-

“The captioned Appellant was unaware about any order has being passed against him and ex parte Earlier also he was not aware about the notices issued by the Assessing Officer and hence it remained unattended This resulted into ex parte assessment Further, he was not aware about the formalities or requirements of visiting the portal and checking for any Income Tax updates or orders about him Off late, he happened to meet some CA and in a very informal discussion he was told about this Income tax angle and through his help only, he could meet another CA and completed the formalities of filing the appeal. And hence the delay, the same may please be condoned.”

6. The Id. CIT (A) has not admitted the appeal on the ground that it is barred by limitation and “ignorance of law is no excuse” and there is no presumption that every tax payer is not aware of the law. We have to take lenient view looking to the change in the system of online communication and through ITB portal in such cases of small time civil contractor who are without any aid of professionals who are not aware of any such online communication system through ITB portal. Therefore, in the interest of justice we feel that matter should be restored back to the file of the Id. AO and the assessee is also directed to update the information of communication to the Assessing Officer and participate in the proceedings and give the explanation about the cash deposits. The Assessing Officer shall pass the assessment order after being given opportunity of hearing to the assessee.

Accordingly, the matter is remanded back to the file of the ld. AO.

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

Order pronounced on 28th August, 2023.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER
Mumbai; Dated 28/08/2023
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai