

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAIBEFORE SHRI BR BASKARAN (ACCOUNTANT MEMBER)
AND
SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)I.T.A No. 1822/Mum/2023 - AY 2012-13
I.T.A No. 1823/Mum/2023 - AY 2014-15Sanghamitra Prakash Patel
5/1102, 11th Floor, Shubh Labh
Apartment, 90 Feet Road, Near
Kelkar College, Mulund (E),
Mumbai-400 081vs Income Tax Officer-34(3)-1
Mumbai, C-12, Pratyakshakar
Bhavan, Bandra Kurla Complex,
Bandra (E), Mumbai-400 051**PAN : AFVPP1248K****APPELLANT****RESPONDENT**Present for Appellant : Shri Devendra Jain
Present for Respondent : Shri Surendra Kumar MeenaDate of hearing : 16/08/2023
Date of pronouncement of order : 29/08/2023**ORDER****PER : NARENDER KUMAR CHOUDHRI (JM)**

These two appeals have been preferred by the Assessee against the orders even dated 28/02/2023 impugned therein passed by the National Faceless Appeal Centre (NFAC) / Commissioner of Income-tax (Appeals) [in short, 'Ld.CIT(A)] under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y. 2012-13 and 2014-15 and, respectively.

2. As the issue and facts involved in both the appeals are identical, hence, for the sake of brevity, we are disposing off the same by this common order. For brevity we are deciding I.T.A No. 1822/Mum/2023 as a lead case.

Condonation of delay

3. We observe that I.T.A No. 1822/Mum/2023, there is a delay of 23 days in filing the appeals for which the Assessee has claimed as under:-

"1. That the Order u/s 250 dated 28/02/2023 was passed by CIT(A), for A.Y. 2012-13 was uploaded on the e-filing portal and sent through E-mail. However, the E-mail was missed by me as the same was received in spam folder and no physical copy of the order was received.

2. That somewhere in the month of April, 2023 I checked the status of appeal proceedings at e-filing portal and came to know about the said order. It was because of this reason; I could not file appeal within the statutory limitation period of 60 days.

3. Hence, this affidavit is being made in support of my application to the Hon'ble Income Tax Appellate Tribunal, Mumbai to condone the delay in filing of appeal."

4. The Assessee in support of condonation of delay also filed supporting affidavit dated 16/05/2023 duly executed. Considering the reasons given by the Assessee for delay of 23 days in filing the appeal being genuine and bonafide, the delay of 23 days is hereby condoned.

5. For the Assessment Year 2014-15, the Assessee has declared his total income at Rs.3,71,586/- by filing its return of income on 29/07/2014. Subsequently, the case was re-opened by recording reasons under section 147 of the Act and Subsequently, notices under 143(2) and 142(1) of the Act were issued which remained un-complied with. Thereafter, finding no

option, the Assessing Officer completed the assessment proceedings and added the amount of Rs.36,72,072/- to the income of the Assessee as long term capital gain under section 54 of the Act. The Assessee, though challenged the said addition before the Ld.CIT(A), however, inspite of sending six notices, neither appeared nor filed any reply on ITB portal or otherwise and, therefore, in the compelling circumstances, the Ld.CIT(A) decided the appeal of the Assessee ex-parte and ultimately affirmed the addition of long term capital gain as made by the Assessing Officer against which the Assessee is in appeal before us.

6. We observe that both the authorities below though afforded reasonable opportunities of being heard to the Assessee however, the Assessee neither filed its reply nor substantiated its claim of exemption under section 54/54F of the Act by any supporting document. It appears from the impugned order that some submission was made in physical form by the Assessee. However, no supporting evidence has been submitted and therefore the Ld.CIT(A) was unable to decide the appeal on merit and/or by giving reasoned findings, hence, for the just and proper decision of the case and for the ends of substantial justice and considering the conduct of the Assessee as both the orders passed by the authorities below are ex-parte on the compelling circumstances/reasons created by the Assessee, we are inclined to demand the instant case to the file of the Ld.CIT(A) for decision afresh but subject to deposit of Rs.5500/- in the Prime Minister's Relief Fund within 30 days' of receipt of this order by the Assessee. Suffice to say, the Ld.CIT(A) shall afford reasonable opportunity of being heard to the Assessee.

We also direct the Assessee to appear and file the relevant documents as would be needed by the Ld. Commissioner for proper and just decision of the case. In case of further default, the Assessee shall not be entitled for any kind of leniency.

7. In the result, both the appeals filed by the Assessee, stands allowed for statistical purpose.

Order pronounced on 29/08/2023.

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

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Mumbai, Dated: 29.08.2023
Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी /The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि ,आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private
Secretary

ITAT, Mumbai