

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos.217to 220/Asr/2023
Assessment Year: 2010-11**

Sh. Jaswant Singh, Salarpur, Raipur, Jalandhar. [PAN:-CCPPS8598Q] (Appellant)	Vs.	Income Tax Officer, Ward-4, Phagwara. (Respondent)
---	-----	---

Appellant by	Sh. J. S. Bhasin, Adv
Respondent by	Smt. Ratinder Kaur, Sr. DR

Date of Hearing	28.08.2023
Date of Pronouncement	30.08.2023

ORDER

Per:, Bench:

A Batch of four appeals of assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi, [in brevity the 'CIT (A)'] order passed u/s 250 of the Income Tax Act 1961[in brevity 'the Act'] for A.Y. 2010-11. The impugned orders were emanated from the order of the Id. Income Tax Officer, Ward-4, Phagwara order passed u/s 144/147 and u/s 271(1)(c) of the Act.

2. The appeal of the assessee was filed with delay of 3 days. The ld. AR explained that the delay of 3 days is due to postal delay and it is negligible. The ld. DR had not made any objection against the condonation of delay. Accordingly, the delay of 3 days is condoned.

3. At the outset, all the appeals are similar in nature and have common factual ground. So, all the appeals are taken together, heard together and disposed of together. **ITA No. 217/Asr/2023 is taken as lead case.**

4. The assessee has taken the following grounds:

“1. That the ld.CIT(A)/NFAC has grossly erred in arbitrarily dismissing the assessee’s appeal by wrongly declining to condone the delay involved in filing of appeal.

2. That the ld.CIT(A)/NFAC ought to have condoned the delay appreciating the sufficient cause when it did not smack of malafide or a dilatory strategy.

3. That the ld.CIT(A)/NFAC ought to have annulled the impugned order as void when for same year, the jurisdictional AO at Jalandhar had also passed an order u/s. 147/144, appreciating that two AOs could not simultaneously hold jurisdiction over one assessee to pass two different orders for same Asstt year,

4. *That the ld.CIT(A)/NFAC, after condoning the delay, ought to have adjudicated the issues of law and facts raised in its appeal by the assessee.*
5. *That ld.CIT(A)/NFAC was not justified in impliedly confirming the addition pf Rs.33,59,502/- as made by the Id.AO by way of an ex-parte order.*
6. *That the order under appeal is wholly against law, perverse on facts, against natural justice, hence, liable to be set aside.”*

5. Brief facts as culled out from the records are that the assessee is an NRI and residing at Canada. The assessee was totally unaware about the orders passed by the revenue in the impugned assessment year. After returning from Canada, assessee found the demand and immediately taken action through the legal representative. Accordingly, the delay was occurred in different appeals between 95 days to 318 days for filing the appeal before the ld. CIT(A). Further there is some clerical defect in the Form No. 35 related to filing of appeal before the ld. CIT(A). During assessment proceeding the demand was raised and aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) passed the order without considering the merit, only the appeals were rejected on limitation. Being aggrieved the assessee filed an appeal before us.

6. The ld. AR vehemently argued and placed that the delay was from 95 to 318 days for filing appeal before the ld. CIT(A). A chart is inserted related to ITA No.

And the delay in filing the appeal before the Id. CIT(A) which are produced as below:

<i>Sl. No.</i>	<i>ITA No.</i>	<i>Delay for filing Form 35</i>
1.	217/Asr/2023	More than 300 days
2.	218/Asr/2023	More than 250 days
3.	219/Asr/2023	More than 220 days
4.	220/Asr/2023	More than 90 days

6.1 The Id. AR further explained that the assessee is an NRI and permanently residing at Canada. After returning India, the assessee has taken action for filing of appeals and accordingly made contact with local consultant. The assessee arrived in India on 02.03.2018 the copy of the passport as proof of arrival is enclosed in **APB page 4 & 5**. The Id. AR prayed that the matter may be remitted back to the Id. CIT(A) for further adjudication on merit.

7. The Id. DR vehemently argued and relied on the order of the revenue authorities. The Id. DR invited our attention in appeal order the relevant paragraphs from 5 to 5.4 of the appeal order which are reproduced as below:

“5. FINDINGS & DECISION:

5.1 Before adjudicating the grounds, it is pertinent to note the reasons attributed by the appellant for the delay in filing Form 35 by more than 300 days. As per Form 35, the impugned order is dated and serviced on 03.07.2017, whereas the appeal is filed on 11.06.2018. As per the provisions of Sec.249(2), the appeal

should be presented within 30 days from the date of service of notice of demand relating to the assessment or penalty.

5.2 The appellant has submitted that he 'was residing outside India during the course of the entire assessment proceedings, consequently was unable to get the copy of the notices and orders/receive such notices and orders' and hence, the appeal was not filed in-time. However, the appellant has failed to produce any material evidence like copy of passport, visa etc., to prove that he was outside India during the period of assessment proceedings and thereafter ie., after the order was passed.

5.3 On perusal of the impugned assessment order, it is seen that the appellant has not even responded to any of the communications including service of Assessment order 'through affixture' vide Affixture order dated 29.06.2017 signed by the ITO, Ward-4, Phagwara.

5.4 Further, as admitted by the appellant in Form 35 Col 2c, the Date of service of Order / Notice of Demand dated 29.06.2017 is 03.07.2017 and the appellant could have filed the appeal within the stipulated time. However, the appellant submitted that he has filed appeal on 11.06.2018 with a delay of more than 300 days which is in violation of the provisions of Sec.249(2) and the appellant has failed to convince this

appellate authority that this was a 'sufficient cause' or 'genuine hardship'. The appellant in his submissions has relied upon various appellate orders and on perusal, this appellate authority is of the considered opinion that none of the case laws cited by the appellant are squarely applicable in this case. However, the following Hon'ble jurisdictional High Courts decisions clearly mention that the condonation of delay cannot not be acceded to without 'sufficient cause.'

8. We heard the rival submission and relied on the documents available in the record. The assessee during appeal hearing filed the condonation of delay before the Id. CIT(A). The delay was not a common it is varied to 95 to 318 days but the Id. CIT(A) has taken all the delay in a same purview and rejected the appeal on the ground of limitation. We find that the assessee has reasonable cause for delay in filing appeal. We respectfully relied on the order of Hon'ble Apex court which is stated below: -

Hon'ble Supreme Court in the case of State of West Bengal V Adm.1972 AIR 749

"It is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' under s. 5 of the Limitation Act. But those words should be liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party; that is, the delay in filing an appeal should not

have been for reasons which indicate the party's negligence in not taking necessary steps which he could have or should have taken.”

8.1 We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is set aside and the matters are remitted back to the Id. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The assessee is directed to rectify the mistake occurred in Form-35 before the appellate authority. Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

Accordingly, the appeal of the assessee in **ITA No. 217/Asr/2023** is allowed for statistical purposes.

9. In the result, the appeal of assessee in **ITA No.217/Asr/2023** is allowed for statistical purposes. The bench has noticed that the issue raised by the assessee in the above appeal is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in **ITA No. 217/Asr/2023** shall apply *mutatis mutandis* in **ITA Nos.218/Asr/2023to220/Asr/2023** and follows accordingly.

10. In the result, the appeals of the assessee bearing **ITA Nos. 217/Asr/2023 to 220/Asr/2023** are allowed for statistical purposes.

Order pronounced in the open court on 30.08.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order