

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.502/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

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| S. K. Kabra & Company, 101, "Kauttilya" Plot No.327, Opp. Noble Paper, Khatodara, Surat – 395002 | Vs. | The ITO, Ward-1(2)(1), Surat |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJFS6674D | | |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|--------------------------|
| Appellant by | Shri Suresh K. Kabra, CA |
| Respondent by | Shri Vinod Kumar, Sr. DR |
| Date of Hearing | 13/10/2023 |
| Date of Pronouncement | 19/10/2023 |

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short "the Id. CIT(A)"], National Faceless Appeal Centre (in short 'the NFAC'), Delhi, dated 17.05.2023, which in turn arises out of an assessment order passed by the Central Processing Centre (in short 'CPC'), Bengaluru, u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 11.07.2018.

2. The appeal filed by the assessee for assessment year (AY) 2017-18, is barred by limitation by six (6) days. Shri Suresh K. Kabra, Learned Counsel for the assessee submitted a petition for condonation of delay, requesting the Bench to condone the delay. The contents of the said petition are reproduced below:

“That I am partner of S K KABRA and COMPANY, Chartered Accountants having office at 101, Kautilya, Plot No 327, Ganesh Dyeing Gali, Khatodara, SURAT. The firm is engaged in professional practice as Chartered Accountants duly enrolled with the ICAI.

That for AY 2017-18, the firm had filed an APPEAL before the National Faceless Appeal Centre against the Intimation u/s 143(1) received by the assessee. The order of the NFAC was received on 17/05/2023.

That the appeal fee was also deposited on 19/05/2023 for filing the appeal before the hon'ble ITAT. The appeal was due for filing on 18/07/2023. In the meantime, there was announcements for filing the appeal before the hon'ble Benches in ONLINE MODE. The partner of the appellant firm was one of the Office Bearer and had a strong desire to file the appeal online, so that experience of ONLINE filing could be shared with the other members. The whole week passed in trying for the online submission, which could be finally done on 23/07/2023. That also did not succeed, as there were some lapses, and the online filed appeal was rejected. The very next day on 24th immediately the APPEAL was filed manually so as to avoid further delay in the matter. That in this process, a delay of 6 days occurred. It is earnestly requested and prayed before the hon'ble Bench to condone the delay in the interest of the justice. The delay being for justifiable reasons. The appellant would take all care in future in this regard.

The above averments and statement is true to the best of the knowledge of the partner making this affidavit. This is made with full conscious state of mind and without any coercion. The deponent is aware that making false affidavit is a punishable offence under the law of the land.”

3. Shri Suresh K. Kabra, Ld Counsel, argued that minor delay of 6 days, mainly occurred because assessee was trying to file appeal on line mode, however he could not succeed and eventually the decision was taken to file the appeal manually. The ld Counsel prays the Bench that such minor delay may be condoned.

4. However, Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue opposed the prayer of Ld. Counsel for condonation of delay.

5. We have heard both the parties on this preliminary issue. We note that there was announcement for filing the appeal before the hon'ble Benches in online mode. The assessee- firm was trying to file the appeal

online mode but could not succeed, and then finally, the appeal was filed manually and in this process delay of 6 days occurred. We find that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. There was no deliberateness or negligence or mala fides on the part of the assessee. Therefore, the minor delay of 6 days in filing this appeal deserve to be condoned and therefore the delay is hereby condoned.

6. On merit, Ld. Counsel submitted that in assessee's case, the order (Intimation) under section 143(1) of the Act, was passed by the CPC, Bengaluru, which contains the issue relating to TDS mismatch. The assessee could not file the reconciliation of TDS before CPC, Bengaluru. On appeal by the assessee, the ld. CIT(A) has confirmed the action of Assessing Officer. The Ld. Counsel for the assessee submitted that necessary details of TDS mismatch and reconciliation of TDS mismatch is to be submitted before the Assessing Officer, therefore matter may be remitted back to the file of the Assessing Officer for fresh adjudication on this issue.

7. On the other hand, Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue did not have any objection if the matter is remitted back to the file of Assessing Officer.

8. We have heard both the parties. We note that assessee had participated in appellate proceedings, before ld CIT(A) and sought adjournment to file details and documents. However, ld CIT(A) has passed an *ex-parte* order therefore we note that assessee could not plead his case successfully before the ld. CIT(A). We also note that Ld. CIT(A) has not passed the order as per the mandate of provisions of

section 250(6) of the Act. That is, ld. CIT(A) did not pass order on merit based on the material available on record. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Assessing Officer for *de novo* adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 19/10/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 19/10/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat