

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2488/Mum./2023
(Assessment Year : 2018-19)

ITA no.2489/Mum./2023
(Assessment Year : 2019-20)

Everest Grande Commercial Premises
Co- Operative Society Ltd.
CTS 46/34, Plot no.3A, Everest Grande
Society, Mahakali Caves Road
Andheri (East), Mumbai 400 093
PAN – AAAAE8788A

..... Appellant

v/s

Income Tax Officer
Ward-24(1)(1), Mumbai

..... Respondent

Assessee by : Shri S.N. Akolawala

Revenue by : Shri P.D. Chaugule

Date of Hearing – 30/10/2023

Date of Order – 10/11/2023

ORDER

PER BENCH

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 19/06/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment years 2018-19 and 2019-20.

2. In its appeal for the assessment year 2018-19, the assessee has raised the following grounds:-

"1) The learned CIT (Appeals) erred in dismissing the appeal being filed late & without condoning the delay.

2) The learned CIT (Appeals) erred in not not deciding appeal on merit for addition of Rs.1,78,01,881/- as a business income & also on the basis of under Mutuality principal."

3. While in the appeal for the assessment year 2019-20, the assessee has raised the following grounds:-

"1). The learned CIT (Appeals) erred in dismissing the appeal being filed late & without condoning the delay

2). The learned CIT (Appeals) erred in not not deciding appeal on merit for addition of Rs.1,66,96,810/- as a business income & also on the basis of under Mutuality principal."

4. During the hearing, the learned Authorised Representative ("*learned AR*") at the outset submitted that the learned CIT(A) vide separate impugned orders dismissed the appeal filed by the assessee for the assessment year 2018-19 and 2019-20 only on the ground of delay in filing the appeals. The learned AR submitted that he was looking after accounts and administration of the assessee society and was busy in the treatment of his wife for the past 8 to 9 years. The learned AR further submitted that the assessee filed an application seeking condonation of delay before the learned CIT(A), which was rejected and the appeal for the assessment years 2018-19 and 2019-20 were dismissed in limine.

5. On the other hand, the learned Departmental Representative vehemently relied upon the impugned order passed by the learned CIT(A).

6. We have considered the submissions of both sides and perused the material available on record. For the assessment year 2018-19, the assessee filed its return of income on 28/08/2018 declaring a total income of Rs. 23,15,094, which was processed vide intimation dated 29/06/2019 issued under section 143(1) of the Act determining the total income of Rs. 2,01,16,975 after making an addition of Rs. 1,78,01,881 under the head income from business and profession. For the assessment year 2019-20, the assessee filed its return of income on 04/10/2019 declaring a total income of Rs. 26,16,490, which was processed vide intimation dated 06/05/2020 issued under section 143(1) of the Act determining the total income of Rs. 1,93,63,775 after making an addition of Rs. 1,66,96,810 under the head income from business and profession. Being aggrieved, the assessee filed separate appeals before the learned CIT(A). In Form No. 35 for both assessment years, the assessee mentioned that there is a delay in filing the appeal. As per the assessee, Mr. Shabbir N Akolawala, i.e. learned representative for the assessee, was looking after the accounts and administration of the assessee and was also looking after the income tax matters of the assessee. It was further submitted that Mr. Shabbir N Akolawala was busy due to the incurable illness of his wife for the past 8 to 9 years. Due to the aforesaid reason, it was submitted that he was unable to give attention to the work of the assessee. It was further submitted that part of the delay is due to the COVID-19-related restrictions imposed in the state. Further, it was submitted that he is not techno-savvy and he had to depend on his staff to download orders to reply to or to contact the practising Chartered Accountants to file appeals, rectifications, etc. It is evident from the record

that in respect of both the appeals, similar submissions were made for seeking condonation of delay. The learned CIT(A), vide separate impugned orders, accepted the submission of the assessee and condoned the delay in respect of the period covered by the Covid 19 pandemic, which was also excluded by the Hon'ble Supreme Court. However, in respect of the balance delay of 575 days in respect of the appeal for the assessment year 2018-19 and delay of 346 days in respect of the appeal for the assessment year 2019-20, the learned CIT(A) did not agree with the submissions of the assessee and rejected the prayer for condonation of delay.

7. In support of its claim that the assessee has also filed the affidavit of Mr. Shabbir N Akolawala along with the present appeals, wherein it has been reiterated that the wife of Mr. Shabbir N Akolawala was suffering from an incurable disease which is the rarest of disease in the world and because of same since last few years she had undergone many major operations. In this regard, the assessee has also furnished the medical certificate issued by Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute dated 02/03/2023 supporting the aforesaid claim. From the perusal of the aforesaid affidavit and medical certificate, we are of the view that the ill-health of the wife of the person who was looking after the accounts and administration of the assessee and was also responsible for attending the income tax matters constitutes reasonable cause for delay in filing the appeal before the learned CIT(A). Accordingly, the impugned orders passed by the learned CIT(A) dismissing the assessee's appeals only on the ground of delay are set aside. Since the learned CIT(A) has not decided the appeals filed by the assessee on

merits, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeals for the assessment years 2018-19 and 2019-20 on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default.

8. In the result, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 10/11/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 10/11/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai