

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
ITA No.3262/Mum/2023
(A.Y. 2010-11)

Subhas Shibukumar Bose Raj Villa, Room No. 2, Sector 18A, Plot No. 123, Nerul Node-III, Navi Mumbai, Mumbai - 400706	Vs.	ITO, Ward-28(3)(1) Vashi Railway Station Building, Vashi, Navi Mumbai Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AHTPB7474M		
Appellant	..	Respondent

Appellant by :	Rajesh Shah
Respondent by :	Lieder Panicker

Date of Hearing	27.12.2023
Date of Pronouncement	29.12.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 23.03.2023 for A.Y. 2010-11. The assessee has raised the following grounds before us:

- “1. *The appellant request that delay in filing of an appeal is condoned. The appellant has a reasonable cause for not filing of an appeal in time.*
2. *On facts and circumstances of the case and in law, the learned Assessing Officer as well as CIT(A) erred in passing an order without giving the notices at correct email address and correct address though the appellant has shifted to new place. The natural justice requires that the proper opportunity may be provided to the appellant.*
3. *On facts and circumstances of the case and in law, the learned CIT(A) erred, in confirming Rs.31,50,296 though the appellant has not earned such Income. The appellant Income was below the taxable limit.*
4. *On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition though the amounts were cash sales of the various retail products deposited in the bank account.*

Without prejudice to above, the total Income out of the same is below taxable and no addition can be made of the gross amount.

5. *On facts and circumstances of the case and in law, the appellant be provided an opportunity to submit the evidences which could not be filed before the Income Tax Authorities.*
6. *The appellant craves leave to add, to amend, to modify, to substitute, to withdraw and/or to cancel any of the grounds of appeal.”*

2. There was a delay of 114 days in filing this appeal by the assessee. The assessee has filed application dated 12.09.2023 for condonation of delay in filing this appeal. The assessee submitted that e-mail id of the tax consultant of the assessee was provided for the purpose of communication of the appeal order to be passed by the Id. CIT(A) NFAC. The Id. CIT(A) NFAC has passed the appeal order u/s 250 of the Act on 28.03.2023, however, tax consultant has not informed the assessee about passing of the order by the Id. CIT(A). The assessee was not having any access to the e-mail of his tax consultant, therefore, his new tax consultant had downloaded the order of the CIT(A) by visiting the online site which resulted delay in filing this appeal by 114 days. Thereafter the assessee has immediately changed the e-mail id. The assessee has also filed affidavit dated 08.09.2023 affirming that delay in filing the appeal as above occurred due to non-communication by the erstwhile tax consultant in respect of the appeal order mailed in his e-mail ID.

3. After hearing both side we have perused the copy of form no. 35 in respect of appeal filed by the assessee before the Id. CIT(A). On perusal of the form 35 it is found that in the form 35 the assessee has given the e-mail address as under:

“info@msucas.com”

We have also perused the copy of form no. 36 as per which the assessee has filed appeal before the ITAT against order of CIT(A). We find that in the Form No. 36 the assessee has given new e-mail address as under:

“mumbai.sar.itat7.1@incometax.gov.in”

We have also considered the decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. MST. Katigir & Ors. Civil Appeal No.460 of 1987 dated 19.12.1987 on the proposition that sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to the approach which scuttles a decision on merits. Considering the above facts and material on record it appears that there is bonafide reason for delay in filing this appeal by 114 days because of not receiving the copy of order sent to the e-mail address of the erstwhile tax consultant of the assessee. Therefore, we condone the delay in filing this appeal.

4. Fact in brief is that assessee has not filed return of income subsequently, on the basis of information available the case of the assessee was reopened u/s 147 of the Act, after issuing of notice u/s 148 of the Act dated 30.03.2017. The AO has stated that during the course of assessment a number of notices were issued to assessee however, no compliance was made from the side of the assessee. Therefore, assessment was completed ex-parte u/s 144 of the Act and total income was assessed at Rs.31,50,296/- on the basis of information available in AIR that the assessee has deposited cash of Rs.17,18,566/- and Rs.14,31,730/- in his bank account maintained with State Bank of India, and the Greater Bombay Cooperative Bank Limited.

5. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee stating that during the course

of appellate proceedings the assessee has not made any compliance to the notices dated 03.03.2021, 07.03.2023, 23.02.2023 and 06.03.2023.

6. During the course of appellate proceedings before us the ld. Counsel submitted that no compliance could be made before the ld. CIT(A) since, the assessee was not having any access to the e-mail id of his erstwhile tax consultant as reported in the submission made for condonation of delay in filing the appeal. In respect of non-attendance before the assessing officer at the time of assessment proceedings the ld. Counsel submitted that assessing officer has issued notices at the wrong address therefore, such notices have not been received by the assessee. In support of his contention the ld. Counsel submitted that assessing officer has also mentioned wrong address of the assessee in the order passed u/s 143(3) r.w.s 144 of the Act.

On the other hand, the ld. D.R supported the order of lower authorities.

7. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above it is noticed that during the course of assessment the assessing officer has mentioned the following address of the assessee in the assessment order passed u/s 144 r.w.s 143(3) passed on 07.11.2017 as under:

“NL1, B1, 401
Sector -2,
Nerul, Navi Mumbai”

However, as per the return of income filed by the assessee for assessment year 2008-09, 2009-10, 2015-16 and 2016-17 the assessee has provided the following address in the return of income filed on ITR-V as under:

“Flat 4, NL-1, B-13
Sector 2, Nerul
Navi Mumbai
Maharashtra”

After perusal of the acknowledgments of returns filed by the assessee for various years as supra it is clear that assessing officer has incorrectly mentioned Building No. B1 and Flat no. 401 in the address of the assessee whereas the correct address provided by the assessee in the return of income filed constantly with the department was flat no. 4 and Building No. B13. These material facts demonstrate that because of issuing of notices on the wrong address the same could not be communicated to the assessee as a result no compliance could be made. It is evident from the aforesaid facts and material placed on record that the case of the assessee was not considered on merit both at the level of assessing officer and the Id. CIT(A). Normally, whenever any irregularity crept in the proceedings then after removing the irregularity proceedings is to be initiated from that stage by remitting the issue to the Id. Appellate authority. We would be multiplying the litigation, because the Id. CIT(A) would call for remand report from the AO and proceedings would commence on two stages, therefore, in order to avoid that situation we would deem it proper to set aside the order to the file of the assessing officer for deciding afresh after verification of the relevant material to be submitted by the assessee after providing adequate opportunity to the assessee. The assessee is also directed to make compliance before the assessing officer without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.12.2023

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 29.12.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.