

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. Nos. 1194 & 1195/KOL/2023
Assessment Years: 2013-2014 & 2014-2015**

***Arpita Pal,.....Appellant
1/1B, Madan Dutta Lane, Bowbazar,
Kolkata-700012
[PAN: AXDPP4709R]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-37(1), Kolkata,
3, Govt. Place,
Kolkata-700001***

Appearances by:

*Shri Ritesh Goel on behalf of Giridhar Dhelia, A.R,
appeared on behalf of the assessee*

*Shri B.K. Singh, JCIT, Sr. D.R., appeared on behalf of
the Revenue*

Date of concluding the hearing : January 17, 2024

Date of pronouncing the order : January 18, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present two appeals are directed at the instance of assessee against separate orders of ld. Commissioner of Income

Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 22.09.2023 passed on each appeal of the assessee for A.Y. 2013-14, 2014-15 respectively.

2. The assessee has taken nine grounds of appeal in each year. The Id. Counsel for the assessee Shri Giridhar Dhelia was stated to be present in the Tribunal but on account of his health, he has to leave the Tribunal. Proxy Counsel has made a request for adjournment. However, with the assistance of Id. D.R., we have gone through the record and proceed to decide these appeals on merit instead of adjourning them. A perusal of the grounds of appeal would reveal that in Grounds No. 1 to 5, the assessee has pleaded in both the years that Id. CIT(Appeals) has erred in not condoning the delay in filing the appeal and deciding the issue *ex-parte*.

3. With the assistance of Id. D.R., we have gone through the orders of Id. CIT(Appeals), which are verbatim same, except variation of the dates and amounts. Page 2 of the Id. CIT(Appeals) orders which is a concluding one, read as under in A.Ys. 2013-14 and 2014-15:-

For A.Y. 2013-2014

"2.1. Present appeal has been filed by the appellant on 07.05.2022 whereas the assessment order u/s 147 r.w.s. 144 of the Act was passed on 26.03.2022. Thus, there was delay of more than 40 days in filing the appeal for which following explanation has been given by the appellant' in Form-35:

"The assessment for the A.Y. 2013-14 was completed u/s 147/143(3) of the IT Act on 26.03.2022. The appeal against the aforesaid order should have been fled within

30 days from the date of the order i.e., by 25.04.2022. However, the same could not be filed within the specified date due to preoccupation ^during festival season like Bengali New Year and Akshay Tiritiya when buying gold ornaments is considered as auspicious. In view of the aforesaid fact, your honour is requested to kindly condone the delay and accept the appeal filed by the assessee. ”

2.2. The condonation request of the appellant has been duly considered. However, the appellant has neither stated any reasonable cause nor submitted any documentary evidence to support the condonation request in respect to delay in filing the present appeal. Considering the above facts it is seen that the appellant has filed the present appeal with a delay of more than 40 days for insufficient cause.

3. In result, the appeal is dismissed as not admitted”.

For A.Y. 2014-2015

“2.1. Present appeal has been filed by the appellant on 07.05.2022 whereas the assessment order u/s 147 r.w.s. 144 of the Act was passed on 28.03.2022. Thus, there was delay of more than 30 days in filing the appeal for which following explanation has been given by the appellant in form-35:

“The assessment for the A.Y. 2014-15 was completed u/s 147/143(3) of the IT Act on 28.03.2022. The appeal against the aforesaid order should have been fled within 30 days from the date of the order i.e., by 27.04.2022. However, the same could not be filed within the specified date due to preoccupation during festival season like Bengali New Year and Akshay Tiritiya when buying gold ornaments is considered as auspicious. In view of the aforesaid fact, your honour is requested to kindly condone the delay and accept the appeal filed by the assessee. ” r

2.2. The condonation request of the appellant has been duly considered. However, the appellant has neither stated any reasonable cause nor submitted any documentary evidence to support the condonation request in respect to delay in filing the present appeal. Considering the above facts it is seen that the appellant has filed the present appeal with a delay of more than 30 days for insufficient cause.

3. *In result, the appeal is dismissed as not admitted”.*

4. It is pertinent to observe that against the assessment order dated 26.03.2022, an appeal was filed before the ld. CIT(Appeals) on 07.05.2022. Similarly in A.Y. 2014-15 an assessment order was passed on 28.03.2022, and appeal was filed before the ld. CIT(Appeals) on 07,05.2022. There was no delay because as per the general directions of Hon’ble Supreme Court, the period of limitation will not be applicable upto May, 2022. It is to be excluded as a COVID period. Somewhere at the end of March, Hon’ble Supreme Court has passed the final order on monitoring delayed aspect due to COVID and after that order, a liberty was given of 90 days. Thus these appeals were to be construed by the ld. 1st Appellate Authority within time and ought to have been decided on merit. The ld. 1st Appellate Authority has adopted a very hyper-technical approach while deciding the appeals. There is no delay as such and at the most it could be a small delay after COVID period. The ld. 1st Appellate Authority ought to have condoned it. It is apt to observe that the quasi judicial authority are being respected not on account of their power to legalise the injustice on technical ground but because they are capable of removing injustice and is expected to do so. With the above observation, we set aside both the orders of ld. 1st Appellate Authority and restore these issues to the file of ld. CIT(Appeals) for re-adjudication on merit.

5. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 18/01/2024.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 18th day of January, 2024

*Copies to :(1) Arpita Pal,
1/1B, Madan Dutta Lane, Bowbazar,
Kolkata-700012*

*(2) Income Tax Officer,
Ward-37(1), Kolkata,
3, Govt. Place, Kolkata-700001*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) CIT- , Kolkata;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.