

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.2895/Del/2023
(Assessment Year : 2017-18)

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| Rajiv Kumar Singh Vill. Chamrodh, Tarapur, Mawana, Meerut, UP-250 404 | Vs. | ITO Ward – 2(2) Meerut |
| PAN No. BXEPR 0212 H | | |
| (APPELLANT) | | (RESPONDENT) |

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|-------------|------------------------------|
| Assessee by | Shri Rohit Agarwal, C.A. |
| Revenue by | Shri Vivek Vardhan, Sr. D.R. |

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| Date of hearing: | 23.01.2024 |
| Date of Pronouncement: | 23.01.2024 |

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order of the Ld. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi dated 17.09.2023 arising from the assessment order dated 31.12.2019 passed by the Assessing Officer (AO) under Section 144 of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2017-18.

2. As per the grounds of appeal, the assessee has *inter alia* challenged the denial of condonation of delay in instituting the appeal before him on misconception of facts and law.

3. When the matter was called for hearing, the learned Counsel for the assessee at the outset, pointed out that the assessment order was passed under section 143(3) of the Act vide order dated 31.12.2019 making addition of Rs.2,22,02,110/- without taking into account the submissions filed by the assessee before the AO. The aforesaid assessment order however, could not be found in the departmental e-portal. A screen shot of 'closure order' towards e-proceedings of assessment was placed to show that only Computation Sheet and Demand Notice is reflected on the screen and the assessment order is not shown to be uploaded. The learned Counsel pointed out that the assessment order dated 31.12.2019 was also not served physically upon the assessee. Consequently, owing to non-receipt, the assessee applied certified copy of assessment order vide order dated 29.07.2020. The certified copy of the assessment order was consequently provided to the assessee on 30.07.2020. On the basis of the certified copy of the assessment order, the assessee filed an appeal before the CIT(A), NFAC on 28.08.2020 i.e. within prescribed limitation of 30 days from the date of service of order.

3.1 The CIT(A) vide order dated 27.09.2023 however refused to admit the appeal of the assessee stating that there was a delay of 44 days in filing thereof. The CIT(A) for the purpose of counting 44 days delay considered the original date of passing of order i.e. 31.12.2019 as the date of service thereof and allowed relief provided by Hon' ble Supreme Court in view of Covid-19 outbreak. While refusing to condone so called delay, the CIT(A)-NFAC did not even issue any deficiency letter to the assessee seeking his clarification to the purported delay in filing of appeal and disposal of appeal *ex parte* wrongly assuming 44 days delay in filing thereof.

3.2 The learned Counsel thus in essence submitted that the appeal has been filed within time and without prejudice, the delay if any, is very nominal and requires to be

condoned in the interest of substantial justice. The learned Counsel also submitted that he was prevented by reasonable cause for not filing of appeal in time due to non-service of assessment order by hand or by post or through website till 30.07.2020.

4. On perusal of the impugned first appellate order, it is seen that the CIT(A) dismissed the appeal of the assessee *in limine* by refusing to condone purported delay of 44 days calculated by him. The appeal was thus dismissed without adjudication of appeal on merits. The assessee on the other hand has demonstrated that there was no delay in filing the appeal before the CIT(A) when the date of actual receipt of assessment order is reckoned to be 30.07.2020 when the assessee could lay hands on assessment order after making an application for obtaining a certified copy. We find that the assessee has acted *bonafide* and appears to have been filed appeal within the prescribed under section 249(2) of the Act. Be that as it may, sufficient cause exist for condonation of delay in terms of section 249(3) of the Act in as much as the assessment order was neither shown to be served nor reflected in the portal of Department as per closure report, a screen shot of which downloaded from the e-portal of the Department has been placed before us. Sufficient grounds exists for cononation of delay if any, in the light of judgment in the case of *Collector Land Acquisition, Anantnag & Another vs. Mst. Katiji & Ors (1987) 2 SCC 107; N. Balakrishnan vs. M. Krishnamurthy, 1998 (7) SCC 123 and Vijay Vishin Meghani vs. DCIT (2017) 398 ITR 250 (Bom.)*.

5. Consequently, we consider it just and proper to summarily restore the matter back to the file of the CIT(A) for *denovo* consideration of appeal and fresh determination of issues involved in the light of the relevant facts and in accordance with law after giving proper opportunity to the assessee.

6. The delay before the CIT(A) in instituting the appeal is thus condoned and the CIT(A) is called upon to adjudicate the appeal on merits as per grounds raised in accordance with law. The assessee is directed to dutifully attend the proceedings before the First Appellate Authority failing which the CIT(A) shall be at liberty to draw appropriate inference. Therefore, all the issues involved in the present appeal are set aside and the matter is remitted back to the file of the CIT(A) for fresh determination in accordance with law.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order was pronounced in the open court on 23.01.2024

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 23.01.2024

*Priti Yadav, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI