

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.1/Hyd/2024		
Assessment Year: 2013-14		
Asian Tours and Travels, Secunderabad, 9-4-212/94, Opp to Railway Station, Hyderabad. Telangana – 500003. PAN : AAKFA8752H.	Vs.	The Income Tax Officer, Ward-10(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Mohd. Afzal, Advocate.	
Revenue by:	Shri Rohit Mujumdar, Sr.AR.	
Date of hearing:	22/01/2024	
Date of pronouncement:	23/01/2024	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2013-14 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.25.10.2023 invoking proceedings under section 143(1) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner in considering the maxim ignoratia juris non excusat, while refusing to condone the delay of 2263 days without considering the facts and circumstances mentioned in the condonation petition.

3. The learned Commissioner ought to have appreciated that in view of the explanation-5, inserted by the Finance Act 2001 with effect from 01.04.2002, the depreciation has to be allowed automatically by the Department, therefore, the learned Assessing Officer erred in disallowing the depreciation and the learned CIT further erred in confirming the order of the Assessing Officer.

4. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.”

3. The brief facts of the case are that the assessee is a firm which is in the business of arranging vehicles for carrying on employees to various factories and schools. The assessee filed return of income on 14.04.2014 for A.Y. 2013-14 admitting an income of Rs.6,08,760/- which was processed by the CPC on 28.03.2016, determining the total income at Rs.20,49,070/- and disallowed depreciation of Rs.14,40,314/- claimed by the assessee. No details were provided for such disallowance. There was no defective notice u/s 139(9) of the IT Act. The assessee has not received intimation by way of post or through notice server, therefore, the assessee was not aware about the order passed and demand raised by the Department. The primary email ID provided to the Department while obtaining PAN chandraswaroop5@gmail.com was no more available to the assessee. Due to the said reason, there was a huge delay of 6 years 74 days, however the said delay was not condoned by the

ld.CIT(A) as the assessee has not adduced any reasonable cause which prevented it from filing the appeal with such inordinate delay. Since the delay in filing of appeal has not been condoned, the appeal of assessee became non-est and thus, the appeal of the assessee was dismissed.

4. Feeling aggrieved with the intimation u/s 143(1) of the Act by the Assessing Officer, assessee filed an appeal, which was later migrated to the ld.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before me, ld.AR submitted that the order / intimation u/s 143(1) of the Act was sent to the e-mail ID which was provided to the Department while obtaining PAN, however the same was not available with the assessee. Ld. AR also submitted that there was ignorance on the part of the assessee to know about the technical procedure of obtaining the assessment order. He further submitted that assessee has a good case on merit and therefore, the merit should not be pitted against the non-condonation of delay by the ld.CIT(A).

6. Per contra, the ld.DR has submitted that no evidence placed on record by the assessee to substantiate the delay and the matter is lacking with the pivotal evidences. Ld.CIT(A) after elaborate discussion has dismissed the appeal of assessee. Hence, the appeal of the assessee deserves to be dismissed.

7. I have heard the rival contentions of both the parties and perused the material available on record. The assessee had instituted an appeal on 08.07.2022 against the order / intimation passed by the Central Processing Unit, Bangalore for A.Y. 2013-14 on 28.03.2016. It was noted by the NFAC in Para 4.1 that the appeal was required to be filed on or before 27.04.2016, as the order was duly served to the assessee on 28.03.2016. The assessee, in the application for condonation of delay in filing the appeal before the NFAC, Delhi, has submitted as under (Para 4.2.)

“4.2 The appellant has filed submissions in support of delay in filing of appeal as under:

“And in the matter of Submission of petition for condonation of delay The assessee is in the business of arranging vehicles for carrying on employees to various factories and schools. Return of income for the subject assessment year was filed on 14.04.2014, admitting an income of Rs.6,08,760/-. It appears the return of income was processed by the CPC on 28.03.2016, determining the total income at Rs.20,49,070/-, the CPC disallowed depreciation of Rs.14,40,314/- claimed by the assessee. No details are provided for such disallowance. There is no defective notice u/s 139(9) of the IT Act. The assessee has not received intimation by way of post or through notice server, therefore, the assessee is not aware about the order passed and demand raised by the Department, however, the Accountant of the assessee noticed that the refunds claimed in the subsequent assessment years are being adjusted for the demand, therefore, sought clarification from the Department the reasons for adjustment. The Income Tax Officer downloaded the intimation and provided a copy to the assessee’s Accountant. The assessee’s Accountant made a grievance petition to the Department on 06.09.2021, stating certain facts therein, and was expecting rectification or the problem will be sought out, however, there is no response to the notice till submission of this petition. It is further submitted that on account of closure of schools and loss of contract with certain companies due to covid the assessee’s turnover drastically reduced from Rs.1.21Cr in 2013-14 to Rs.63.49 lakhs in 2021-22. The assessee is in financial trouble on account of repayment of loans taken for purchase of vehicles etc. The primary email ID provided to the Department while obtaining PAN chandraswaroop5@gmail.com is no more available to the assessee as this person left the services of assessee’s Accountant. In this scenario

there is a huge delay of 6 years 74 days. The delay is attributable to the Covid period, non receipt of intimation and no response from the Department on the assessee's grievance petition filed on 06.09.2021. The same is on account of ignorance of the assessee, change of mode of service of notices by the Department, non availability of primary email provided by the Accountant. There is no contumacious conduct on the part of the assessee and the same is unintentional. Therefore, the Hon'ble Commissioner is requested to kindly condone the delay to decide the issue on merits".

8. From the perusal of the submissions of the assessee before NFAC, Delhi, observed the following :

- (1) it is the case of the assessee that it has not received any intimation by way of post or through notice server and was not aware about the order passed and demand raised by the Department.
- (2) Assessee's accountant had noticed that the refund claimed in the assessee year 2013-14 was adjusted by the Department in the subsequent assessment years.
- (3) The assessee had sought the reason / clarification from the Revenue for adjustment of the amount.
- (4) ITO had downloaded the intimation and provided the copy to the assessee.
- (5) After receipt of intimation from the ITO, the accountant of the assessee filed a grievance petition before the department on 09.05.2021.

8.1. From the reading of the above said reasons, it is abundantly clear that the adjustment of the refund amount was made immediately after passing of the intimation in subsequent assessment years. As per the procedure of Revenue, as and when a return is to be filed, then the assessee is required to visit the Income Tax Portal and upload the return of income. Various communications sent by the Revenue are available in the account of assessee including the order / intimation issued u/s 143(1) of the Act. Further, as and when the department serves the intimation, then information is sent through SMS as well as by e-mail on the given mail-ID. The conclusion of the assessee that intimation was not served on the assessee is without any merit and the law has contemplated the service of notice through e-mail. For that I can reply upon Rule 127 and Section 282 of the Act. / SMS. In the present case, it is not the case of the assessee that the intimation has not been served through e-mail. Furthermore, as per the case of the assessee, the assessee claimed refund for A.Y. 2013-14 which had been adjusted in the subsequent year, then common man would go to the portal and find out the status of the earlier assessment years and find out the reasons for adjustment and previous refunds. In the present case, when the assessee sought clarification from the department, the department in all its fairness intimated about the assessment and provided a copy to the assessee. Despite the receipt of intimation u/s 143(1) of the Act, the assessee had chosen not to file the appeal within the stipulated time and on the contrary, preferred to file a grievance petition before the department on 06.09.2021. Thereafter, the grievance petition was disposed of, and

the appeal before NFAC was filed on 08.07.2022 after a period of one year, after filing the grievance petition.

9. In my view, the explanation given by the assessee before the Id.CIT(A) / NFAC, Delhi is not plausible and reasonable and is against the conduct of a prudent common person. Once the assessee is claiming the refund and filing the return of income, it is presumed that the assessee keeping track of the orders passed by the revenue authorities and it is difficult to accept the submission that the notice was not served and therefore, the appeal was not filed within the stipulated time. In my view, the law provides the limitations for filing appeals, and there is a sacrosanct purpose behind it i.e., to bring finality to the order passed by the CPC / Id.CIT(A). If the unexplained delay is condoned by the Tribunal, then it would lead to a chaotic and uncertainty in tax administration to the department. Though it is correct, every year is a separate and distinct assessment year but nonetheless, in a business, the preceding year's closing balance is the opening balance of the current year, and the financials of previous year has an impact on the taxability of the current year.

10. For the above said purposes, even though there are many judgments, they are either in favour of the assessee or against the assessee, however, each case is to be decided on its individual facts. Overall, these judgments emphasize that the assessee has to show a plausible reason for not preferring the appeal within the stipulated time. In the present case, upon examination of the reasons mentioned regarding the condonation of delay, I do not find any

plausible reason, therefore, the Id.CIT(A) / NFAC, Delhi had rightly dismissed the condonation application for 6 years 74 days. Accordingly, the order passed by Id.CIT(A)/ NFAC is upheld and the appeal of the assessee is dismissed.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 23rd January, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 23rd January, 2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Asian Tours and Travels, Secunderabad, 9-4-212/94, Opp to Railway Station, Hyderabad. Telangana - 500003.
2	The Income Tax Officer, Ward-10(1), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order