

आयकर अपीलिय अधिकरण
मुंबई पीठ " आई", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " I ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 3276/मुं/2023 (नि. व. 2017-18)
ITA NO.3276/MUM/2023(A.Y.2017-18)

Manoj Kumar Lade,
Block, 2nd Floor, 2W24 DACK,
Thane-Belapur Road, Koperkairane,
Navi Mumbai -400 709
PAN: ADGPL-5927-J

..... अपीलार्थी/ Appellant

बनाम Vs.

International Tax Ward -3(1)(1), Mumbai
Room No.1628, Air India Building,
Nariman Point,
Mumbai – 400 021.

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Reepal G. Tralshawala
प्रतिवादी द्वारा/ Respondent by : Shri Anil Sant

सुनवाई की तिथि/ Date of hearing : 23/01/2024
घोषणा की तिथि/ Date of pronouncement : 23/01/2024

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-57, Mumbai [in short 'the CIT(A)'] dated 25/08/2023, for the Assessment Year 2017-18.

2. Shri Reepal G. Tralshawala appearing on behalf of the assessee submitted that the assessee is a Non-Resident Indian (NRI) for the past several years. He had no taxable income in India, hence, no return was filed by the assessee. In the

impugned assessment year the Assessing Officer made assessment u/s. 144 of the Income Tax Act, 1961 [in short 'the Act'] and made addition of Rs.16,74,350/- on account of unexplained cash deposits and credit entries in the bank account. The notices u/s. 142(1) of the Act allegedly sent by the Assessing Officer through e-mail on various dates were never received by the assessee /came to the knowledge of assessee. The notices either went to junk folder of e-mail or were probably missed by assessee. The said assessee received only one notice through post on the local address and the assessee furnished requisite information in compliance thereof. Thereafter, no notice was received by the assessee. The assessment for Assessment Year 2017-18 was completed by the Assessing Officer u/s. 144 of the Act. The assessment order dated 30/12/2019 for Assessment Year 2017-18 came to the knowledge of assessee on 26/02/2020 when the amount Rs.20,95,341/- was recovered by the Department from assessee's Bank account with YES Bank. The Id. Authorized Representative of the assessee referred to the Bank Statement at page 12 of the paper book. Immediately, thereafter the assessee made enquiries and filed appeal before the CIT(A) on 03/03/2020. By the time the assessee filed appeal, there was delay of 33 days in filing of the appeal. The assessee explained the reasons for delay in filing of appeal before the CIT(A), however, the submissions of the assessee were rejected and the CIT(A) dismissed the appeal solely on the ground of limitation. The Id. Authorized Representative of the assessee submitted that the assessee has prima-facie good case in its favour. The Id. Authorized Representative of the assessee prayed for an opportunity to explain the case before the CIT(A).

3. Per contra, Shri Anil Sant representing the Department vehemently defended the impugned order. The Id. Departmental Representative

submitted that the assessee did no co-operate during the assessment proceedings, hence, the Assessing Officer was constrained to pass order invoking provisions of section 144 of the Act. The assessee filed appeal before the CIT(A) with delay of 33 days. No justifiable reason has been given by the assessee for delay in filing of appeal. The Id. Departmental Representative prayed for upholding the impugned order and dismissing appeal of the assessee.

4. Both sides heard. The assessee is in appeal against the order of CIT(A) dismissing appeal of assessee on the ground of limitation. The assessee filed appeal before the CIT(A) with a delay of 33 days. The assessee explained the reasons for delay in filing of appeal. The CIT(A) rejected assessee's explanation stating it to be vague.

5. The Hon'ble Supreme Court of India in the case of Ram Nath Sao Alias Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors. (2002) 3 SCC 195) has held that acceptance of explanation furnished should be the rule and refusal, an exception. The Hon'ble Court held:

"12..... There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechanical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

6. The Hon'ble Apex Court in the case of Collector Land Acquisition, vs Mst. Katiji & Ors., 167 ITR 471(SC) held that the explanation furnished by the assessee for seeking condonation should be accepted. The expression "sufficient cause" should be interpreted liberally.

7. We find that in the instant case the First Appellate Authority has taken a pedantic approach in rejecting assessee's reasons explaining delay in filing of appeal. After considering the reasons given by the assessee causing delay in filing of first appeal, we are satisfied that the delay in filing of appeal was for the bonafide reasons and not intentional. Thus, the delay of 33 days in filing of first appeal is condoned. The appeal is restored to the CIT(A) for adjudication on merits. The CIT(A) shall grant reasonable opportunity of hearing/make submissions before deciding the appeal, in accordance with law.

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

Order pronounced in the open court on Tuesday the 23rd day of January, 2024.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 23/01/2024
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai