

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1045/Bang/2023
Assessment Year : 2017-18

Shri B.L. Nagendra Prasad, No. 175, 6 th Cross, Gandhinagar, Bangalore – 560 009. PAN: ABOPN 3061H	Vs.	The Income Tax Officer, Ward – 5(2)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri Subramanian .S, JCIT DR

Date of Hearing	:	25-01-2024
Date of Pronouncement	:	31-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 12/09/2023 passed by the NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

“1. The appellate order passed by the learned Commissioner of Income-tax [Appeals], passed under Section 250 of the Act dated 12/09/2023, in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the Appellant's case, may be quashed.

2. The appellant denies himself liable to be assessed on total income of Rs. 2,35,27,070/- determined by the learned assessing officer and upheld by the learned

Commissioner of Income-tax [Appeals], as against the income returned and reported by the appellant of Rs. 12,68,970/-, on the facts and circumstances of the case.

3. The ex parte order passed by the learned Commissioner of Income tax [Appeals], is in grave violation of principles of natural justice, as the appellant could have been afforded another opportunity of hearing, consequently the impugned ex parte order passed by the learned Commissioner of Income-tax [Appeals] requires to be cancelled in the interest of justice and equity, on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax [Appeals] is not justified in erroneously holding that the appellant is not interested in prosecuting the appeal. The appellant is under deep financial stress and is running from pillar to post for sorting out various issues relating to his business and further there are no employees with the appellant and the appellant is and was not aware of the nuances of the new regime of income-tax e-proceedings and the posting of hearing were inadvertently not communicated by the appellant to his tax consultant and consequently the notices of hearing sent to the appellant could not be attended for and the said action of the appellant in not responding to the notices are not deliberate or intentional. The learned Commissioner of Income-tax [Appeals] ought not to have held that the appellant is not interested in prosecuting the appeal, on the facts and circumstances.

5. The learned Commissioner of Income-tax [Appeals] is not justified in confirming the addition made by the learned assessing officer under the provisions of section 69A of the Act amounting to Rs. 2,22,58,100/- as unexplained money, on the following grounds on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax [Appeals] and the learned assessing officer failed to appreciate that the deposits made by the appellant in the bank accounts are all from explainable sources being amounts received back from various persons to whom advance for purchase of lands were given, also amounts received from relatives of the appellant and also from the earlier withdrawals and cash in hand, on the facts and circumstances of the case.

7. The addition made by the learned assessing officer and confirmed by the learned Commissioner of Income-tax

[Appeals] under section 69A of the Act is bad in law as the requisite conditions to invoke the provision of section 69A of the Act have not been complied with and consequently no addition could have been made invoking the provisions of section 69A of the Act since the deposits made in the bank accounts are all from explainable and available sources and cannot partake the character of unexplained money, on the facts and circumstances of the case.

8. The learned Commissioner of Income-tax [Appeals] was not justified in confirming the action of the learned assessing officer in taxing the appellant as per special taxes at 60% as per the provisions of section 115BBE of the Act for the amounts deposited by the appellant during the year, on the facts and circumstances of the case.

9. Without prejudice, though not conceding for the sake of argument, the learned Commissioner of Income-tax [Appeals] is not justified in confirming the action of the learned assessing officer taxing the appellant under special rates under section 115BBE of the Act for the entire year without properly appreciating that The taxation Laws [Second Amendment] Act, 2016, the provisions of section 115BBE of the Act was introduced and the assent of the President of India was received only on 15/12/2016. Thus, the provisions of section 115BBE of the Act is applicable only to such of those transactions which have been transacted on or after 15/12/2016 and the said special rate of taxes cannot be made applicable to the transactions prior to 15/12/2016, on the facts and circumstances of the case.

10. Without prejudice, to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies himself liable to be charged to interest under section 234 B of the Income Tax Act on the facts and circumstances of the case. The appellant contends that the levy of interest under section 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.

11. The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.

12. For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

2. At the outset, the Ld.AR submitted that there is delay of 31 days in filing of the present appeal before this *Tribunal*.

2.1 The assessee has filed condonation petition vide affidavit dated 11/12/2023 seeking the delay to be condoned.

2.2 The assessee has submitted as under:

“5. However, for the reasons mentioned below the Appellant/Petitioner was prevented from filing the statutory appeal within the time stipulated in the statute i.e. within 60 days i.e. on or before 11/11/2023.

6. It is submitted that the Petitioner / Appellant is a director in a company called M/s. Skytop Builders Private Limited. The said company in which the Petitioner / Appellant is a director is under a deep financial stress and the Petitioner / Appellant was sorting out all the issues that the company is facing. Thus, the Petitioner / Appellant was concentrating on various issues relating to the company in which he is a director and further there are no employees with the Petitioner / Appellant to even assist him at this distress time. Further, the Petitioner / Appellant is and was not aware of the nuances of the new regime of income-tax e-proceedings and the posting of hearing were inadvertently not communicated by the appellant to his tax consultant either during the assessment proceedings and also in the appellate proceedings and consequently the notices of hearing sent to the appellant could not be attended for and the said action of the Petitioner / Appellant in not responding to the notices are not deliberate or intentional, which has in fact resulted in best judgement assessment under section 144 of the Act and also an exparte appellate order under section 250 of the Act.

7. It is submitted that the Petitioner / Appellant received a recovery notice for making payment of outstanding demand and the Petitioner / Appellant took the said notice to his chartered accountant to take his assistance in replying to the said notice of recovery in the first week of December 2023. The said chartered accountant after

seeing the notice for recovery of outstanding demand, logged into the Income-tax e-portal of the appellant and to their shock, the impugned appellate order under section 250 of the Act was passed by the learned Commissioner of Income-tax [Appeals], NFAC, Delhi, dated 12/09/2023.

8. The said chartered Accountant advised the Petitioner / Appellant to prefer a statutory appeal before the Hon'ble Tribunal and suggested the Petitioner / Appellant to consult and approach the present counsel i.e. Sri. V. Chandrasekhar, Advocate for suggesting and taking necessary steps for filing appeal before this Hon'ble Tribunal against the impugned order passed under section 250 of the Act. Thereafter, the Petitioner / Appellant approached the present counsel and briefed him about the issues involved in the present appeal. The present counsel after going through the available papers prepared the appeal papers immediately within a reasonable time.

9. In view of the above fact, that the Petitioner / Appellant could not file the present appeal before this Hon'ble Income Tax Appellate Tribunal, well in time i.e., within 60 days from the date of receipt of order i.e., on or before 11/11/2023 and by the time the Appellant / Petitioner filed this present appeal, there arose a total delay of about 31 number of days in filing this present appeal before this Hon'ble Income-tax Appellate Tribunal as per the provisions of the Act.

10. In view of the above, it is humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condone the delay of about 31 days in filing the present appeal against the order passed by the learned Commissioner of Income-tax [Appeals], NFAC, Delhi, dated 12/09/2023 for the Assessment Year 2017-18 and hear the same on merits for the advancement of substantial cause of justice.

11. Wherefore, in view of the above factual background, the Petitioner / Appellant could not file the Appeal before this Hon'ble Tribunal well in time as per the scheme of the Act and there arose a delay of about 31 days in filing this present appeal before this Hon'ble Tribunal and the said act of the appellant in not filing the present appeal within time is not deliberate or intentional and the Petitioner / Appellant by not filing the appeal in time will not gain any benefit and for the reasons as stated above the Petitioner / Appellant could not file the present appeal within the

stipulated time which fact requires to be appreciated by this Hon'ble Tribunal.

12. It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the appellant / Petitioner would be put to great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondent if this application of condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others [1987] 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs. Smt. Nirmala Devi and Others 118 ITR 507. Further the Appellant relies on other decisions of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank Et Others [2009] 9 SCC 733; and another decision of the Hon'ble Apex Court in the case of Ram Nath Sao alias Ram Nath Sahu Et Others Vs. Gobardhan Sao at Others, reported in [2002] 3 SCC 195 and another decision of the Hon'ble Apex Court in the case of CIT Vs. West Bengal Infrastructure Development Finance Corporation Limited [2011] 334 ITR 269 [SC].”

2.3 In view of the above, the assessee could not file the appeal before this *Tribunal* well in time and by the time the appeal papers were prepared for filing, there arose delay of about 31 days in filing these present appeal before this *Tribunal*. The reason for the delay in filing the present appeal was due to reason beyond the control of the assessee.

He thus prayed for the delay to be condoned.

2.4 The Ld.DR though objected however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeal.

We have perused the submissions advanced by both sides in the light of records placed before us.

2.5 In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case

of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

2.6 It is also submitted by the Ld.AR that there is no malafide intention on behalf of assessee in not filing the present appeal within time.

The Ld.DR on the contrary opposed the delay to be condoned.

2.7 Considering the circumstances under which the delay was caused in filing the present appeal before this *Tribunal* and that nothing contrary could be established by the revenue before us.

2.8 We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

2.9 Considering the submissions by both sides and respectfully following the observation by *Hon'ble Supreme Court*, we find it fit

to condone the delay caused in filing the present appeal as it is not attributable to the assessee.

Accordingly, the delay in filing the present appeal stands condoned.

3. Brief facts of the case are as under:

3.1 The assessee is an individual. He is assessed to income tax in the office of the ITO, Ward – 5(2)(3), Bangalore with PAN: ABOPN3061H.

3.2 The assessee filed his regular return of income on 29.06.2017 vide e-filing acknowledgment No: 833249540290617 declaring a total income of Rs.12,68,970/-. The return was selected for Limited Scrutiny through CASS, notice u/s 143(2) of the Income Tax Act, 1961 was issued on 13.08.2018 and one more notice u/s. 143(2) of the Act, dated 29.09.2018 was served on the Assessee.

Notices u/s 142(1) were issued on 20.11.2019 and 26.12.2019, calling for specific details. The Assessee began gathering the details as required by the learned ITO.

However, in the meanwhile the Ld.AO passed his order under section 144 on 28/12/2019. Thus denying the assessee a reasonable opportunity of being heard. The Ld.AO assessed the income of the Assessee at Rs.2,37,12,066/- as against the returned income of Rs. 12,68,970/-.

3.3 Aggrieved by the order of Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

The Ld.CIT(A) dismissed the appeal of the assessee for non-compliance of notice.

3.4 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

4. Before us, ld. A.R. submitted that assessee is not well versed in Income Tax Portal and failed to notice about the notice issued by the department digitally. Hence, he prayed that one more opportunity of hearing may be given before the Ld. CIT(A). We accede to the request of the Ld. A.Rs. and remit the issue in dispute to the file of Ld.CIT(A) to decide the same afresh after giving an opportunity of hearing to the assessee.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st January, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore