

IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'SMC' BENCH, PUNE

BEFORE HON'BLE PARTHA SARATHI CHOUDHURY, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1051/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19

Sanil Sethu Madhavan

56/4/1, Kondhwa Khurd Lane-12,

Nr Ravi Apts, Pune-411048

PAN : AUCPM6579Q

..... अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,

CPC, Bengaluru

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : None for the Assessee

Revenue by : Mr Gaurav Singh 'Ld. DR'

सुनवाई की तारीख / Date of conclusive Hearing : 23/02/2024

घोषणा की तारीख / Date of Pronouncement : 23/02/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

This appeal is filed u/s 253(1)(a) of the Income Tax Act ['the Act'] by the assessee challenging the order of National Faceless Appeal Centre, Delhi ['NFAC'] DIN & Order ITBA/NFAC/S/250/2023-24/1054731019(1) dt. 31/07/2023 passed u/s 250 of the Act.

2.1 Briefly stated facts anent to the case are that; the assessee filed his return of income ['ITR'] u/s 139(1) on 27/07/2018 declaring total income of ₹12,99,680/- with a claim for tax deducted at sources ['TDS'] of ₹2,55,000/-. The Ld. CPC processed aforesaid the ITR summarily u/s 143(1) of the Act on 20/11/2018 with a tax demand of ₹2,10,802/-



2.2 Since the demand in this case was arisen owing to restricting the TDS credit to ₹22,000/- as against the claim of the assessee made in his ITR, the assessee assailed the denial of full credit of TDS in an appeal before first appellate authority on 30/03/2020 that is with a delay of 398 days. In absence of affidavit explaining reasons beyond aforesaid delay and a petition seeking condonation of such delay, the Ld. NFAC came to dismiss the appeal *in limine* by relying on the catena of decisions.

2.3 Aggrieved assessee brought up this appeal challenging the action of tax authorities on violation of principle of natural justice and on merits.

3. In absence of the assessee, with able assistance from the Ld. DR we proceeded to adjudicate the matter *ex-parte* u/s 24 of the Income Tax Appellate Rules, 1963. [‘ITAT-Rules’].

4. We have heard Ld. DR Mr Singh and perused the material placed on record in light of rule 18 of ITAT-Rules. We noted that the order of intimation was passed on 20/11/2018, whereas the appeal thereagainst before the Ld. NFAC was filed on 30/03/2020. Ostensibly there is unsubstantial delay in instituting the appeal before the Ld. NFAC. This appeal admittedly was filed without accompanying therewith a petition for condonation of delay stating therein the circumstance due to which said delay was caused. Faced with the situation, the Ld. NFAC rejected to



entertain the appeal on a technical ground of assessee's failure to file petition for condonation.

4.1 We our view, the appellate remedy or forum is created by the statute is to rest the dispute and not to accelerate for higher forum, therefore having regard to present facts and circumstances, placing reliance on recent judgement of Hon'ble Supreme Court rendered in 'Raheem Shah & ANR Vs Govind Singh & Ors' [CIVIL APPEAL NO.4628 OF 2023], we are heedful to state that, while dealing with tax litigation, the Ld. NFAC being a quasi-judicial authority was expected to adopt justice oriented approach rather resorting to iron-cast technical one wherein the Ld. NFAC came to dismiss the appeal of the assessee *in limine* on a hyper-technical ground without putting the assessee to notice.

4.2 Further in our considered view, non-filing of petition for condonation and affidavit explaining the reasons beyond delay caused in instituting the appeal before the first appellate authority is technical but curable defect and in all the fairness the assessee deserves an opportunity to cure and contest its case on merits. In view of this, without offering any comments on the merits of the case, we deem it fit to set-aside the impugned order and remit the file of Ld. NFAC with a direction deal therewith *de-nova* in accordance with applicable law and pass a speaking order in terms of section 250(6) of the Act.



4.3 Needless to state the Ld. NFAC shall accord not more than three opportunities to the assessee to represent his case by filing a petition for condonation & explain the reasons thereof to the satisfaction of the first appellate authority and also such evidential material in support of claim of TDS made in the return of income as required under the application laws. We also direct the appellant assessee to co-operate with the Ld. NFAC in speedy disposal of the appeal without seeking unreasoned adjournment.

5. Resultantly, the appeal is ALLOWED FOR STATISTICAL PURPOSE.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday 23rd day of February, 2024.

-S/d-

PARTHA SARATHI CHOUDHURY
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 23rd day of February, 2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The Concerned CIT (MH-India)
5. DR, ITAT, Bench 'SMC', Pune

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A)-NFAC, Delhi (India)
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.