

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3575/Mum./2023

(Assessment Year : 2010-11)

Ranjan Suresh Ghia

B-2403, Ekta Meadows

Off. W.E. Highway, Near Thakur Village

Borivali (East), Mumbai 400 066

PAN - AACPG4682N

..... Appellant

v/s

Income Tax Officer

Ward-25(3)(3), Mumbai

..... Respondent

Assessee by : Ms. Sajal Saravariya

Revenue by : Smt. Mahita Nair

Date of Hearing - 20/02/2024

Date of Order - 27/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 17/09/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2010-11.

2. In this appeal, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A), NFAC erred in holding that the appeal is inadmissible and dismissed the same.

2. On the facts and circumstances of the case and in law, the CIT(A), NFAC erred in holding the appeal inadmissible on incorrect appreciation of facts.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A), NFAC erred in treating the date of Order as date of service of the Order on the Appellant and holding that the appellant had time to file appeal till 28th January 2018.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not appreciating provisions of section 249(2) which permits an appeal to be filed against assessment order within 30 days from the date of the service of notice of demand. In the present case, the date of the service of notice of demand is 30th January 2018.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not issuing any Show Cause Notice (SCN) to the Appellant before passing the Order u/s 250 of the Income Tax Act, 1961.

6. On the facts and circumstances of the case and in law, the the Ld. CIT(A), NFAC erred in not adjudicating the appeal on merits for below grounds of appeal filed before NFAC.

i. The Learned Assessing Officer (ITO 25(3)(3) Mumbai) ("AO") erred, on facts and in law in making assessment under section 144 read with section 147 of the Income Tax Act 1961 ("the Act") for the above assessment year.

ii. Without prejudice to above, Learned AO erred, on facts and in law in making assessment under section 144 read with section 147 of the Act when no notice for re-assessment under section 148 was ever served on the Appellant. Hence, the impugned order of the AO is void ab initio.

iii. Without prejudice to the above, Learned AO erred, on facts and in law in serving the notice under section 142(1) of the by affixture on the address which was not correct.

iv. Without prejudice to the above, Learned AO erred, on facts and in law in assessing total income of the Appellant at Rs. 51,24,670.

v. Without prejudice to the above, Learned AO erred, on facts and in law in raising a demand for income-tax of Rs. 14,81,553 and interest under section 234A of Rs. 14,02,551 and under section 234B of Rs. 15,59,934 on the Appellant.

vi. Without prejudice to the above, the Learned AO erred, on facts and in law, in making the addition of Rs.51,00,000 for alleged unexplained income under provisions of Section 69 of the Act.

vii. The Learned AO erred, on facts and in law in making an addition of Rs. 24,666 for alleged interest from HDFC Bank.

7. In the above circumstances, the order of the CIT (A) be set aside and be directed to dispose off the appeal on merits.

8. The above grounds of appeal are without prejudice to one another, and Appellant craves leaves to add a new ground or delete or modify or alter any of the foregoing grounds."

3. During the hearing, the learned Authorised Representative ("learned AR") at the outset submitted that the learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on the ground of delay in filing the appeal. The learned AR further submitted that the copy of the assessment order was received by the assessee on 30/01/2018 and thereafter the assessee filed the appeal before the learned CIT(A) on 27/02/2018. Accordingly, the learned AR submitted that the appeal was filed within 30 days from the date of receipt of the assessment order, as per the provisions of section 249(2) of the Act.

4. On the other hand, the learned Departmental Representative vehemently relied upon the impugned order passed by the learned CIT(A).

5. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that the Assessing Officer vide order dated 29/12/2017 passed under section 144 r/w section 147 of the Act assessed the total income of the assessee at Rs. 51,24,670. As per the assessee, the copy of the aforesaid order was received by the assessee on 30/01/2018 and thereafter the appeal was filed before the learned CIT(A) on 27/02/2018. Thus, it is the plea of the assessee that its appeal before the learned CIT(A) is within the prescribed limitation period. However, the learned CIT(A) dismissed the appeal filed by the assessee on the basis that the same is delayed by 30 days. As per the learned CIT(A), the

time limit for filing the appeal was available to the assessee till 28/01/2018 and thus the appeal filed on 27/02/2018 was delayed by 30 days.

6. As per the provisions of section 249(2) of the Act, the assessee is required to file the appeal within a period of 30 days from the date of receipt of the assessment order. Undisputedly, in the present case, the assessment order was passed on 29/12/2017. If the limitation period is computed from 29/12/2017 only then the period of 30 days expires on 28/01/2018, i.e. the date considered by the learned CIT(A) to be the last date for filing the appeal. However, it is pertinent to note that the assessment order was passed manually and thus cannot be disputed to have been served on the assessee manually, which can take some time in transit via post. Thus, we do not find any material to doubt the claim of the assessee that the assessment order was received by the assessee on 30/01/2018. It is pertinent to note that even in Form 35, the date of service of the assessment order is mentioned as 30/01/2018. Accordingly, we are of the considered view that there is no basis in the assumption by the learned CIT(A) that in the present case, the limitation period for filing appeal before the learned CIT(A) was available only till 28/01/2018. Further, if limitation period of 30 days is computed from 30/01/2018 then the same expires on 01/03/2018. Accordingly, we are of the considered view that the appeal filed by the assessee on 27/02/2018 before the learned CIT(A) is within the prescribed limitation period. Therefore, the impugned order passed by the learned CIT(A) dismissing the appeal filed by the assessee on the ground of delay is set aside. Since the learned CIT(A) has not decided the appeal filed by the assessee on merits, we deem it fit and

proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default.

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

Order pronounced in the open Court on 27/02/2024

**Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER**

MUMBAI, DATED: 27/02/2024

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

By Order

Assistant Registrar
ITAT, Mumbai