

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.928/PUN./2023
Assessment Year 2016-2017

Vijayanand Charitable Trust, Karve Road Goleshwar, Tal Karad Goleshwar, Karad, PIN – 415 110 Maharashtra. PAN AAATV7334A	vs.	The Income Tax Officer, (Exemption), Ward-1(1), Aayakar Bhavan, PMT Bldg., Swargate Shankarsheth Road, Pune – 411 037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Smt. Deepa Khare
For Revenue :	Shri Sourabh Nayak, Addl.CIT

Date of Hearing :	20.02.2024
Date of Pronouncement :	19.03.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2016-2017, arise against the National Faceless Appeal Centre's [in short the "NFAC"] Delhi's Din & Order no. ITBA/NFAC/S/250/2023-24/1054704300(1), dated 28.07.2023 in proceedings u/sec.154 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“The Learned CIT(A) erred in law and on facts in not condoning delay in filing appeal without appreciating the facts and circumstances of the case.*
2. *The ld.CIT(A) erred in facts & in Law in confirming the action of Id AO in taxing the Gross Receipts of Rs.1,37,66,970.*
3. *The addition in Income made of Rs.1,37,66,970/- & the tax & interest levied of Rs.59,92,570/- be set aside by considering the following care laws.*
4. *The appellant Craves leave to add, to delete, to alter, to rectify & to modify the Grounds of Appeal.”*

3. Suffice to say, we note during the course of hearing that the learned CIT(A) has refused to condone the assessee's alleged delay of “3 years 4 months” thereby not admitting its lower appeal for adjudication on merits as contemplated u/sec.250(6) of the Act.

4. We find with the able assistance of both the learned representatives that the assessee's grievance in its lower appeal was directed against the DCIT (CPC)'s rectification order dated 03.07.2019. It had admittedly filed its lower appeal before learned CIT(A) on 09.12.2022. He holds in this factual backdrop that the assessee has not been able to show any reasonable cause so as to deserve condonation of the above delay.

5. We have given our thoughtful consideration to the foregoing sole issue of condonation of delay. It transpires during the course of hearing that the CIT(A) has nowhere even quantified the actual delay in filing of the assessee's appeal as he has gone by the total intervening time duration between sec.154 order dated 03.07.2019 and the date of filing of the lower appeal on dated 09.12.2022 i.e., 3 years 5 months reduced by the prescribed limitation of 30 days. He has rather included the intervening covid-2019 pandemic outbreak period between 15.03.2020 to 28.02.2022 as well in otherwords despite the fact that hon'ble apex court's directions in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)*, read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)*, have already excluded the above covid-19 pandemic outbreak period from for all intents and purposes under the limitation law.

5.1. This is indeed coupled with the fact that not only the CPC (Bangalore) had allegedly informed the assessee regarding transfer of sec.154 jurisdiction to the jurisdictional Assessing Officer but also the latter had filed the corresponding condonation averments along with the necessary records before the CIT(A) [pages 2 to 4 of the lower appellate order]. The same have nowhere been considered in the CIT(A)'s order as he has incorporated only a part thereof in para-6 page-10 of the lower appellate discussion. Case law

Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) has settled the law long back that all such technical aspects must make way for the cause of substantial justice. We, thus conclude that the learned CIT(A) has erred in law and on facts in considering the assessee's delay of 3 years and 4 months rather than the actual one i.e., 03.07.2019 to 17.02.2020 [alleged sec.154 intimation dated 17.02.2020] and from 01.03.2022 to the date of filing appeal to 09.12.2022 which was duly explained. Faced with this situation, we restrain the assessee's instant grievance back to the CIT(A) for his afresh appropriate adjudication as per law preferably within three effective opportunities of being heard. Ordered accordingly.

6. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 19.03.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER
Pune, Dated 19th March, 2024
VBP/-
Copy to

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

1.	The applicant
2.	The respondent
3.	The NFAC, Delhi.
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "B" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches, Pune.