

**THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 103/KOL/2024
Assessment Year: 2013-2014**

***Sri Vishal Kumar Bhuwania,.....Appellant
C/o. M/s. Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor,
Kolkata-700072
[PAN:ADOPB0280C]***

-Vs.-

***Assistant Commissioner of Income Tax,... Respondent
Central Circle-4(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, E.M. Bypass,
Kolkata-700107***

Appearances by:

*Shri S. Jhajharia, A.R., appeared on behalf of the
assessee*

*Shri Manoj Kumar Pati, Addl. CIT, appeared on behalf
of the Revenue*

Date of concluding the hearing: April 01, 2024

Date of pronouncing the order: April 03, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-27 dated 18.10.2023 passed for A.Y. 2013-14.

2. The Registry has pointed out that the appeal is time barred by 33 days. In order to explain the delay, the assessee has filed an application and also affidavit of Shri Vishal Kumar Bhuwania. In this affidavit, it has been deposed that hardcopy of the order of Id. CIT(Appeals) dated 18.10.2023 was served upon him on 15.01.2024. After service of this order, the deponent has checked the site and only came to know, that it was passed long back i.e. on 18th October, 2023. He further submitted that he was travelling out of India from 02.10.2023 upto 04.01.2024 and immediately after coming to India, he filed the appeal on 19th January, 2024. On the strength of the above submission, he prayed that the delay in filing the appeal be condoned.

3. With the assistance of Id. Representatives, we have gone through the record carefully. On due consideration of the record, we are of the view that the delay in filing the appeal deserves to be condoned for two reasons-

(a) the delay pointed out by the Registry is only of 33 days.

The assessee has explained his position as to how this delay has happened.

(b) Apart from the above, we find that basically the impugned order of the Id. CIT(Appeals) is not sustainable for the reasons are to be stated in the latter paragraph of this order.

Therefore, we condone the delay and proceed to decide the appeal on merit.

4. Brief facts of the case are that assessment of the assessee was reopened and an assessment order was passed on 31st October, 2017 under section 147/143(3) for A.Y. 2013-14. The PAN mentioned in this assessment order is ADOPB0280C. The assessee carried the matter in appeal before the Id. CIT(Appeals). However, in between Vivad Se Vishwas Scheme came and he opted VSV. Copy of Form No. 1 is available on page no. 16 of the paper book. In this Form, it has been stated that appeal was filed on 29th January, 2018. The Reference No./Acknowledgment No. is 37723855/1290118. The assessment order mentioned therein is dated 31st December, 2017 passed under section 143(3) read with section 147.

5. It is pertinent to note that a fresh assessment order has been passed on 25th March, 2022 under section 147. The assessment was reopened by issuance of a notice under section 148 on 31.03.2021. Against this order, the appeal was filed before the Id. CIT(Appeals) on 19th April, 2022. A perusal of the impugned order of the Id. CIT(Appeals) would reveal that date of the order against which, appeal is being filed before the Id. 1st Appellate Authority is mentioned as 25th March, 2022, Assessment Year is 2013-14. The Id. CIT(Appeals) has dismissed this appeal on the ground that the assessee has availed the benefit of VSV Scheme.

6. The stand of the ld. Counsel for the assessee is that the assessee has not availed the benefit of VSV *qua* re-assessment order dated 25th March, 2022, rather it availed the benefit of VSV *qua* the reassessment order passed under section 143(3) read with section 147 on 31.12.2017. Thus this appeal has to be decided on merit.

7. The ld. D.R. was unable to controvert this contention of the ld. Counsel for the assessee on account of unavailability of the complete record.

8. On the strength of the material placed before us, we are satisfied that in March, 2022, the benefit of Scheme was not opened and the assessee has not availed any VSV. The appeal ought to have been decided by the ld. 1st Appellate Authority on merit. Considering this patent error in the order of the ld. CIT(Appeals) had given us a valid reason for condoning the delay. Therefore, we condone the delay and allow the appeal on merit also. The issue is set aside to the ld. 1st Appellate Authority for deciding the appeal on merit against the assessment order dated 25th March, 2022 passed in A.Y. 2013-14.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/04/2024.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 3rd day of April, 2024

*Copies to :(1) Sri Vishal Kumar Bhuwania,
C/o. M/s. Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor, Kolkata-700072*

*(2) Assistant Commissioner of Income Tax,
Central Circle-4(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, E.M. Bypass,
Kolkata-700107*

*(3) Commissioner of Income Tax (Appeals),
Kolkata-27;*

(4) CIT- , Kolkata

(5) The Departmental Representative;

*(6) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.