

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE
BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

**ITA No.121/PUN/2024
Assessment Year : 2018-19**

Built Up Flat No.1, Samada Apartment, Dr. Ketkar Marg, Near Ghodke Chowk, Pune – 411004	Vs.	ITO, Ward 3(1), Pune
PAN : AAEFB6432D		
(Appellant)		(Respondent)

Assessee by : Shri V L Jain
Department by : Shri Ramnath P Murkunde
Date of hearing : 26-04-2024
Date of pronouncement : 29-04-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 18.12.2023 of the CIT, Appeal, Vadodara relating to assessment year 2018-19.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of CIT(A) in dismissing the appeal filed by the assessee on account of delay in filing of the appeal.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in business of builders & developers. It filed its return of income on 27.10.2018 declaring income at Rs.NIL after claiming deduction u/s 80IB(10) of the Income

Tax Act, 1961 (hereinafter referred to as 'the Act') of Rs.51,15,435/-. However, the CPC, Bengaluru generated a demand of Rs.8,30,573/- disallowing the deduction of Rs.51,15,435/- with following comments:

“In schedule VI-A, under Part-C deduction in respect of certain incomes, in Sl.No.2.f deduction is claimed under section 80IB without filing the corresponding Schedule 80IB/Form 10CCB or Form 10CCB has not been e-filed within the due date”.

4. Since the assessee filed the appeal with a delay of 816 days, the Ld. CIT(A), relying on various decisions, dismissed the appeal filed by the assessee on account of delay in filing the appeal stating that the assessee has not mentioned any cogent or convincing ground for delay in filing of the appeal nor furnished anything to prove his claim and was therefore guilty of negligence.

5. Aggrieved with such order of CIT(A), the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee at the outset filed a copy of the order of Tribunal in assessee's own case for assessment year 2019-20 wherein under identical circumstances, the CIT(A) dismissed the appeal of the assessee on account of delay and on further appeal, the Tribunal has restored the issue to the file of CIT(A) with a direction to adjudicate the issue on merit. He accordingly, submitted that this appeal also may be restored to the file of CIT(A) for adjudication on merit.

7. The Ld. DR on the other hand, heavily relied on the order of CIT(A).

8. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the CIT(A) in the instant case dismissed the appeal filed by the assessee on account of delay in filing of the appeal by 816 days stating that the assessee could not explain the reasons for such delay in filing of the appeal nor furnished anything to prove his claim and was therefore guilty of negligence. We find the Tribunal under identical circumstances in assessee's own case for the succeeding assessment year has condoned the delay and restored the issue to the file of CIT(A) with a direction to decide the appeal on merit as per fact and law by complying with the principles of natural justice. Since the assessee in the instant case was also pursuing 154 applications filed before the Assessing Officer and was not negligent as evident from the various details filed in the paper book containing 113 pages, therefore, respectfully following the decision of the Tribunal in assessee's own case in the subsequent year, we restore the issue to the file of CIT(A) with a direction to condone the delay in filing of the appeal and decide the issue on merit after giving due opportunity of being heard to the assessee. The CIT(A) shall decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on this day of 29th April, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 29th April, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	26.04.2024		Sr. PS/PS
2	Draft placed before author	29.04.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			