

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4031/M/2023
Assessment Year: 2013-14**

Shri. Saumik Ketan Doshi, 501, Vallabh Apts, Joshi Lane, Ghatkopar East, Mumbai- 400077. PAN: AHZPD3725F	Vs.	JCIT 27(3) 4 th Floor, Tower 6, Vashi Station Complex, Vashi- 400703, Mumbai.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri V. H. Jariwala, C.A.
Revenue by : Shri Prashant Mahajan, Sr. A.R.

Date of Hearing : 17 . 04. 2024
Date of Pronouncement : 30 . 04 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 17.09.2023 impugned herein passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. In the instant case the assessment order was passed under section 143(3) of the Act on 25.01.2016, against which the assessee preferred first appeal on 21.03.2016 before the Ld. Commissioner within the limitation period as prescribed for filing the appeal in the Act. The said appeal was filed by the assessee in physical form whereas the same was required to be e-filed in

accordance with the procedure enumerated in rules 45 & 46 of the IT Rules, 1962 as substituted by IT (3rd Amendment) Rules, 2016 w.e.f. 01.03.2016 whereby **e-filing** of appeal before the CIT(A) in form No.35 is made mandatorily.

3. Therefore, the appeal of the assessee filed in physical form was dismissed by the then Ld. CIT(A) vide order dated 24.05.2018 under section 250 of the Act. However, the then Ld. CIT(A) granted liberty to the assessee to e-file the appeal with a request for condonation of delay. Consequently, the Assessee against the same assessment order dated 25.01.2016 under section 143(3) of the Act, as per the latest procedure as applicable for filing the appeal electronically w.e.f. 01.03.2016, instituted the e-appeal on 06.06.2018 but with a delay of 832 days and in form No.35 itself has specified the reason for delay in filing of the appeal electronically, which reads as under:

"I had preferred an appeal on 21/03/2016 in paper form for AY 2013-14 against assessment order passed by Joint Commissioner of Income Tax, range 27(3), Mumbai due to inadverttness. The said appeal is treated as non-est by you as per your order no CIT(A) 25/1T-886/2015-16 dated 24/05/2018 I was not aware of amended rules requiring mandatory Tiling of appeal wef 01/03/2016 | humbly request you to condone delay as I was under genuine belief of optional e-filing and provisions were also recently amended at that time. My appeal for AY 2007-08 on identical grounds (as are taken up in the appeal under consideration) were accepted by Tribunal and department has withdrawn appeal from High Court as it was below limit. My representative has attended from time to time, made various submissions and they are called for further hearing on 05/07/2018. To meet ends of natural Justice, I humbly request you to kindly condone delay, accept appeal and oblige."

4. The Ld. Commissioner, though considered the claim of the assessee qua condonation of delay, however, not being satisfied and by holding *“that no sufficient explanation for the period from 15.03.2017 till filing of the second appeal in the year 2020-21 has been explained. There exists no sufficient and good reason for the delay of 832 days. Such delay cannot be condoned as condonation in the present case would not be in accordance with the exposition emanating out of the Hon’ble Apex Court and Hon’ble Jurisdictional High Court decisions. It will rather be grave prejudice to the department. The provisions relating to prescription of limitation in every statute must not be construed so liberally that it would have the effect of taking away the benefit accruing to the other party in a mechanical manner”*, ultimately dismissed the appeal of the assessee in limine being inadmissible for want of limitation.

5. We have given thoughtful considerations to the peculiar facts and circumstances of the case. It is admitted fact that previously the paper appeal against the assessment order dated 25.01.2016 under section 143(3) of the Act was filed within the limitation period on 21.03.2016 and thereafter the same remained pending before the Ld. Commissioner, however, ultimately got disposed of vide order dated 24.05.2018 by the then Ld. CIT(A)-25, Mumbai under section 250 of the Act. It is a fact that the assessee was given a liberty to e-file with a request for condonation of delay and thereafter immediately on 06.06.2018 i.e. within 15 days from the passing of the order dated 24.05.2018 by the then Ld. CIT(A), the assessee preferred its appeal in electronic form as mandated by the rules. As section 14 of the Limitation Act, 1963 it is the mandate of the law that if any time of proceedings has been taken place/spent bonafidely in the court without jurisdiction, then the time during which the party has been prosecuting with due diligence another civil proceeding whether in a court of first instance or of appeal or

revision is liable to be excluded in computing the period of limitation. For clarity and ready reference, the provisions of section 14 of the Limitation Act, 1963 are reproduced herein below:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—

For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

6. Admittedly in the instant case, though the assessee has not filed first appeal before the then Ld. CIT(A) in electronic form, however, it is a fact that the assessee prosecuted its appeal filed in physical form which ultimately resulted into dismissal in limine. The action of the assessee in prosecuting the previous appeal filed in physical form apparently seems to be with due diligence and in bonafide/good faith and therefore time spent in prosecuting the same is liable to be excluded and thus we are inclined to exclude the same. However, considering the peculiar facts and circumstances of the case, as the assessee continued the said appeal filed in physical form for a long time before the then Ld. CIT(A) and therefore we are inclined to allow the appeal of the assessee subject to deposit of Rs.11,000/- in the Prime Minister's national relief fund within 30 days from the date of receipt of this order.

7. Consequently, in the aforesaid terms, the delay of 832 days in filing the first appeal before the Ld. Commissioner is condoned and the case is remanded to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the assessee. The assessee is also directed to cooperate with the appellate proceedings and file its reply and relevant documents, as would be essential/required for proper adjudication of the appeal. In case of default, the assessee shall not be entitled for any leniency.

8. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.04.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Mumbai, Dated: 30.04.2024.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.