

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri MANJUNATHA, G. ACCOUNTANT MEMBER
AND
Shri K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 207/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2016-17)

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| Shri Muktyar Singh Thakur Adilabad PAN:AKXPT0168M (Appellant) | Vs. | Income Tax Officer Ward-1 Adilabad (Respondent) |
| निर्धारित द्वारा / Assessee by: | Advocate S Phanindra | |
| राजस्व द्वारा / Revenue by: | Smt. Sheetal Sarin, DR | |
| सुनवाई की तारीख / Date of hearing: | 25/04/2024 | |
| घोषणा की तारीख / Pronouncement: | 25/04/2024 | |

आदेश / ORDER

Per MANJUNATHA, G. A.M

This appeal filed by the assessee is directed against the order dated 26/02/2024 of the learned CIT (A) NFAC relating to A.Y.2016-17.

2. The assessee raised the following grounds:
1. *The order of the Assessing Officer is bad both on facts and in law.*
 2. *Appellant Muktyar Singh Thakur PAN: AKXPT0168M is retired driver from Supt. Engineer, PR Circle Nizamabad.*

3. During the financial year 2015-16 and A.Y 2016-17 he draws a salary of Rs.6,11,395/- TDS made is Rs.18,371/-.

4. Rs.66,19,126/- is added to income and assessment is made which is not related to his income.

5. Any other ground(s) that may be taken up during the hearing of the appeal”.

3. Brief facts of the case are that the appellant, did not file his return of income for the A.Y 2016-17. The assessment has been subsequently reopened u/s 147 of the Income Tax Act 1961, for the reasons recorded as per which income chargeable to tax has escaped the assessment. A notice u/s 148 dated 30.03.2021 was issued requiring the assessee to file return of income. Subsequently, notice u/s 142(1) dated 26.11.2021 and reminders were issued to the assessee to file necessary details. The assessee neither filed any return of income in response to notice u/s 148 nor responded to the notices/reminders issued u/s 142(1) of the I.T. Act. Therefore, the assessment has been completed u/s 147 r.w.s. 144 r.w.s. 144B of the I.T. Act on 17.03.2022 and determined the total income of Rs. 66,19,130/- by making additions towards income derived from salary as per Form No.26 AS.

4. Being aggrieved by the assessment order, the assessee preferred appeal before the learned CIT (A) NFAC and such appeal has been filed on 8.9.2022 after a delay of 145 days. The assessee has explained the reasons for delay in filing of the appeal before the learned CIT (A) NFAC. According to the assessee, he has handed over the assessment order passed by

the Assessing Officer through his Auditor for filing the appeal and his Auditor informed the assessee that the appeal was filed electronically. However, later it came to the knowledge of the assessee that the appeal was not filed. Therefore, the assessee has taken steps to file the appeal immediately which caused a delay of 145 days and the said delay was on account of ignorance of the procedure in filing of the appeal electronically, but not to derive any undue benefit, therefore, requested to condone the delay in filing of the appeal and adjudicate the appeal. The learned CIT (A) NFAC after taking note of the relevant facts and also provisions of section 5 of Limitation Act, 1963 rejected the petition filed by the assessee for condonation of delay and dismissed the appeal filed by the assessee by holding that the reasons given by the assessee for not filing the appeal within time allowed under the Act does not come under reasonable cause and further, the assessee should be more vigilant and take necessary steps to file the appeal as per the prescribed method. Since, the appellant has not filed the appeal within due date and also not given the reasons for not filing the appeal, the appeal filed by the assessee is dismissed as unadmitted.

5. Aggrieved by the order of the learned CIT (A) NFAC, the assessee is in appeal before us.

6. The learned Counsel for the assessee submitted that the learned CIT (A) NFAC is erred in dismissing the appeal filed by the assessee without condoning the delay in filing of the appeal

even though the assessee has explained the reasons for not filing the appeal within the time allowed under the Act. The learned Counsel for the assessee further submitted that the appellant has taken steps to file the appeal as per law and also handed over all the papers to his Auditor. Further, the Auditor who is handling the tax matters informed the assessee that the appeal has been filed electronically. However, when he came know that the appeal has not been filed electronically, the assessee has taken steps to file the appeal which caused 145 days delay and the said delay is neither intentional nor wanton to any undue benefit. Although the assessee has explained the reasons which is bonafide, the learned CIT (A) NFAC rejected the reasons given by the assessee and dismissed the appeal filed by the assessee for statistical purposes. Therefore, he submitted that the delay in filing of the appeal before the learned CIT (A) NFAC may be condoned and the matter may be set aside to the file of the learned CIT (A) NFAC to decide the issue involved in the appeal on merit.

7. The learned DR, Smt. Sheetal Sarin, on the other hand, supported the orders of the learned CIT (A) NFAC and submitted that the reasons given by the assessee for not filing the appeal in time appears to be vague and general in nature which is evident from the fact that the assessee claims to have filed the appeal electronically but at later stage claimed that the appeal could not be filed because of glitches in online portal. From the reasons given by the assessee it appears that the assessee has not taken any steps to file the appeal as per law

and thus there is no error in the reasons given by the learned CIT (A) NFAC to dismiss the appeal filed by the assessee unadmitted.

8. We have heard both the parties, perused the materials on record and gone through orders of the lower authorities. Admittedly, there is a delay of 145 days in filing of the appeal before the first appellate authority. The appellant in Form 35 has submitted reasons for delay in filing of the appeal and as per the reasons given by the appellant, when the appeal was filed electronically in online portal, it shows that the appeal papers was uploaded, but practically the documents submitted in the online portal was not uploaded. Further, although the appeal papers was uploaded, but it remained in preview mode in online appeal portal . Since there was glitches in online portal, the appeal filed by the assessee could not be finally uploaded. The assessee immediately after noticing the error has filed a fresh appeal with a delay of 145 days. If we go through the reasons given by the assessee for explaining the delay in filing of the appeal, in our considered opinion, it appears the reasons given by the assessee is bonafide and acceptable for the simple reason that sometimes in online portal there are technical errors due to which many people may not be able to successfully upload the required documents to successfully file the appeal. Therefore, considering the practical difficulties faced in filing the appeal by many assessees, in our considered opinion, the reasons given by the assessee that due to certain technical issues, the appeal could not be filed within the time

allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and thus, in our considered view, the learned CIT (A) NFAC ought to have condoned the delay to decide the issue involved in the appeal on merit. Since there is a reasonable cause for not filing of the appeal within the prescribed time allowed, we condone the delay in filing of the appeal before the learned CIT (A) NFAC and restore the issue back to the file of the learned CIT (A) NFAC for fresh adjudication. The learned CIT (A) NFAC is directed to consider the issue on merit after providing reasonable opportunity of hearing to the assessee.

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

Order pronounced in the Open Court at the time of hearing itself i.e. 25th April, 2024.

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| Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER | Sd/- (MANJUNATHA, G) ACCOUNTANT MEMBER |
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Hyderabad, dated 25th April, 2024.

Vinodan/sps

Copy to:

| S.No | Addresses |
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| 1 | Shri Muktyar Singh Thakur, C/o J Dasharath APSEB, 4-7-18/1 Om Sri Sai Nilayal, Vidyanagar Colony, Adilabad |
| 2 | Income Tax Officer Ward-1 Adilabad |
| 3 | Pr.CIT - , Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order