

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 976/Kol/2023
Assessment Year: 2016-17

Sukamal Maity (PAN: AIVPM 5318 G)	Vs.	ITO, Ward-27(2), Haldia
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	24.04.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.05.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. K. Tulsian, Advocate Puja Somani, A.R Neetu Singh, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 01.06.2023 for the AY 2016-17.

2. At the outset, we note that there is a delay of 46 days in filing the appeal and thus it is barred by limitation. The Ld. A.R was accordingly asked to explain the

delay. The Ld. A.R, while drawing attention of the Bench to condonation petition dated 11.9.2023, submitted that the delay has occurred due to laxity on the part of the tax consultant who misplaced the appellate order and it was only when the notice for penalty proceedings was received by the assessee that the assessee came to know that the tax consultant has not filed the appeal before the Tribunal. Immediately thereafter the documents were handed over to Shri Shri Sanjib Kumar Das Sarma, Advocate who prepared appeal documents and after getting them signed filed with the same with delay of 46 days. The Ld. A.R submitted that the delay in filing the appeal is not attributable to the assessee and the assessee is not benefitted in any manner by late filing of appeal. The Ld. A.R argued that in the interest of justice and fair play the delay in filing the appeal may kindly be condoned and the appeal may be admitted for adjudication on merit. The Ld. A.R referred to the decision of Hon'ble Supreme Court in the case of Mst. Katiji & Ors. reported in (1987) 2 SCC 107 (SC) and submitted that technicalities should not prevail over these substance and prayed that the assessee cannot be condemned without hearing on merit.

3. The Ld. D.R on the other hand left the issue of condonation of delay to the wisdom of the Bench.

4. After hearing the rival contentions and perusing the material on record and reasons cited for delay in filing the appeal, we are of the considered view that the delay of 46 days is for sufficient reasons which have been explained before us by the Counsel of the assessee. Therefore, keeping in view the principle of natural justice, we are inclined to condone the delay and admit the appeal for adjudication by following the decision of Hon'ble Supreme court in the case of Mst. Katiji & Ors. (supra).

5. Issue raised in ground no. 1 is against the ex-parte order passed by the Ld. CIT(A) without providing reasonable opportunity of hearing to the assessee.

6. Facts in brief are that the assessee is engaged in the business of real estate developer and during the year was engaged in the construction and sale of flats. The assessee filed return of income on 17.06.2016 declaring total income of Rs.

11,94,440/- which was processed u/s 143(1) of the act. Subsequently the case of the assessee was selected for scrutiny and notices were duly issued and served on the assessee. The assessee filed the evidences/details before the AO as called for from time to time in response to questionnaires/notices issued u/s 143(2)/142(1) of the Act. Finally the AO noted that the assessee has not furnished the evidences explaining the investment in land advances received of Rs. 1,16,25,000/- from various customers/ parties against the sale of flats and came to the conclusion that the assessee failed to prove the genuineness of these advances and added the same to the income of the assessee as unexplained cash credit.

7. In the appellate proceedings, the Ld. CIT(A) has passed ex-parte order and therefore all these evidences could not be placed before the Ld. CIT(A).

8. After hearing the rival contentions and perusing the material on record, and also the evidences filed before us in the form of sale deeds registered in favour of various purchasers of flats, we note that these advances of Rs. 1,16,25,000/- were adjusted against the sale consideration of the flats upon registration of sale deeds. We have also examined the audited balance sheets in the preceding and succeeding assessment years and observed that the amount received as advance against the sale of flats were received in normal course of business and were also adjusted in the subsequent assessment years. We have also perused the sale deeds placed before us from page no. 9 to 42 of PB showing the adjustment of advances received from customers against the sale consideration and therefore the action of authorities below in treating these advances as unexplained cash credit is uncalled for and cannot be sustained. However the assessee neither appeared before the Ld. CIT(A) nor before the AO. Therefore in the interest of justice, it would be reasonable and fair if the issue restored to the file of AO to examine these evidences in the form of sale deeds and decided the case accordingly. Even on merit the trade advances received in the normal course of business and adjusted against the sale in the subsequent years cannot be added u/s 68 of the Act which is in consonance with the ratio held by the Hon'ble

Supreme Court in the case of PCIT-3 vs. Montage Enterprise Pvt. Ltd. [2018] 100 taxmann.com 100(SC).

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

Order is pronounced in the open court on 9th May, 2024

Sd/-
(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 9th May, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sukamal Maity, Ward No. 19, Kishorenagar, Contai-W.B-721401
2. Respondent- ITO, Ward-27(2), Haldia
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata