

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT MEMBER**

**ITA no.206/Nag./2023**  
**(Assessment Year : 2017-18)**

Gurpalsingh Chanansingh Nagra  
Sukhsagar, Jathar Peth, Akola 444 005  
PAN – AANPN6934H

..... Applicant

v/s

Dy. Commissioner of Income Tax  
Central Processing Centre, Bengaluru

..... Respondent

Assessee by : Shri S.G. Gandhi  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 06/05/2024

Date of Order – 06/05/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 07/10/2022, by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18, emanating out of the return of income processed under section 143(1) by the Central Processing Centre on 27/03/2019.

2. During the course of hearing, we find that there is a delay of 203 days in filing the present appeal before the Tribunal. The assessee has filed application-cum-affidavit for condonation of delay explaining the cause of

delay in filing the present appeal. The relevant part of the Affidavit is reproduced as under:-

**"AFFIDAVIT**

*I, Gurpalsingh s/o Chanansingh Nagra, aged 63 years, resident of Akola having PAN AANPN6934H, sworn an affidavit and state as under:*

*I filed my return of income for assessment year 2017-18 on 30/03/2018 declaring total income 22,04,950/-. I am also a partner in a firm M/s. Ex-serviceman Kerosene Agency, Akola (PAN: AAAFE 3423 F). Ex-serviceman Kerosene Agency (ESKA) is having kerosene agency of Indian Oil Company and also engaged in transportation of petroleum products through tanker own by firm and partners in their individual name but used for transportation business of firm. The entire receipts from transportation business are accounted in firm's accounts and taxed in the hands of firm.*

*In the year under consideration assessee participated in transportation tender floated by Hindustan Petroleum Co. Ltd. (HPCL) and awarded a contract to carry on transportation of petroleum products. The transportation receipts were accounted in the books of firm ESKA as per system of accounting consistently followed. However CPC while processing the return of assessee Gurpalsingh C. Nagra considered these receipts in the hands of assessee on the basis of Form No.26AS as the TDS was reflected in the name of Gurpalsingh C. Nagra.*

*The assessee filed an appeal against the intimation u/s 143(1) of the Act and explained the matter before Hon'ble Commissioner of Income Tax (Appeals)-NFAC. The final representation was made before Hon'ble NFAC on 03/10/2022.*

*The appeals before NFAC are not decided for a quite long time. The assessee is not used to electronic communication modes such as email etc. There was no message from NFAC for a quite long time. There was no physical communication from any of the Income Tax Offices. It is only when assessee's counsel took the review of all pending appeals in June 2023, noticed that the assessee's appeal was disposed of and dismissed on 07/10/2022. Assessee is given to understand that there are cases where the submission is made before NFAC three years back but the case is yet to be disposed of.*

*In the present case the same income is taxed twice i.e. in assessee's hands and also in the hands of firm ESKA. In order to get relief from final fact finding authority i.e. Hon'ble Income Tax Appellate Tribunal, assessee has filed an appeal which is delayed by approx. 7 months. The delay was beyond the control of assessee and due to no knowledge of procedural matters or any physical communication from NFAC.*

*The assessee has a good case and would get prejudiced if not given an opportunity of being heard because the issue involved is of double taxation on same income in two hands which is certainly not an intention of statute.*

*This affidavit is sworn to get the delay condoned in filing an appeal before Hon'ble Income Tax Appellate Tribunal.*

*Assessee prays before your honor to kindly condone delay and admit an appeal."*

3. The learned Counsel for the assessee has referred to the decision of the Honb'ble Bombay High Court in the case of Anil Kumar Nehru Vs. ACIT, Circle 16(2), Mumbai, Income Tax Appeal (L) No.1448 of 2016 dated 13th January, 2017 wherein the Hon'ble High Court rejected the plea of the assessee of condonation of delay stating that reasons stated by the assessee is not bona-fide reason and therefore, delay cannot be condoned. Thereafter, the assessee therein preferred SLP before the Hon'ble Supreme Court in Civil Appeal No.(s) 11750/2018 (arising out of Special Leave Petition (C) No.(s) 15715/2017 in the case of Anil Kumar Nehru Vs. ACIT, Circle 16(2), Mumbai, wherein the Hon'ble Supreme Court has held that the High Court should not have taken such a technical view of dismissing the appeal in the instant case on the ground of delay, when it has to decide the question of law between the parties in any case in respect of earlier assessment year. For this reason, the Hon'ble Supreme Court set aside the order of the High Court, condoned the delay for filing the appeal and directed to decide the appeal on merits. The Ld. AR further referred to the decision in the case of DCIT Vs. Atlas Copco (India) Ltd. in ITA No.649/PUN/2013 & ITA No.1726/PUN/2014 & CO Nos.34 & 35/PUN/2019 wherein the Tribunal has condoned the delay of 1965/1018 days by observing as follows:-

*"2. The Cross objection for the A.Y. 2008-09 is late by 1965 days. Similar cross objection filed by the assessee for the A.Y. 2009-10 is also late by 1018 days. The assessee has moved an application for condonation of delay. The Id. AR submitted that the assessee was not properly advised by its then counsel for espousing the legal issue now sought to be raised in the Cross objections,*

which is fundamental in nature. The Id. DR strongly opposed the condonation of delay.

3. It is seen that through the Cross objections, the assessee has raised a legal ground challenging the validity of assessment order passed u/s.143(3) r.w.s. 144C of the Income-tax Act, 1961 (hereinafter also called 'the Act'). The moot point is as to whether such a long delay deserves condonation. At this stage, it is relevant to note the judgment of the Hon'ble Bombay High Court in *Vijay Vishin Meghani Vs. DCIT & Anr* (2017) 398 ITR 250 (Bom) holding that none should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal. Similar to the cases under consideration, in that case too, delay of 2984 days crept in due to improper legal advice. Relying on *Concord of India Ins. Co. Limited VS Nirmala Devi* (1979) 118 ITR 507 (SC), the Hon'ble jurisdictional High Court condoned the delay.

4. In yet another case in *Anil Kumar Nehru and Another vs. ACIT* (2017) 98 CCH 0469 BomHC, there was a delay of 1662 days in filing the appeal. Such a delay was not condoned by the Hon'ble High Court. In further appeal, condoning the delay, the Hon'ble Supreme Court in *Anil Kumar Nehru vs. ACIT* (2018) 103 CCH 0231 ISCC, held that: 'It is a matter of record that on the identical issue raised by the appellant in respect of earlier assessment, the appeal is pending before the High Court. In these circumstances, the High Court should not have taken such a technical view of dismissing the appeal in the instant. case on the ground of delay, when it has to decide the question of law between the parties in any case in respect of earlier assessment year. For this reason we set aside the order of the High Court; condone the delay for filing the appeal and direct to decide the appeal on merits.'

5. Turning to the facts of the instant cases, we find that the assessee has raised a legal ground through these Cross objections, which goes to the root of the matter. It would be seen *infra* that the said legal issue is squarely covered in the assessee's favour by several orders passed by the Tribunal including those by the Pune Benches. Under these circumstances, we condone the delay and take up the Cross objections for disposal on merits."

4. The learned Departmental Representative submitted that he has no objection if the delay is condoned.

5. We have heard the rival submissions and gone through the application for condonation of delay in filing the appeal as well as the affidavit. We have also considered the judicial pronouncements placed before us. We find that reasons specified therein are justified and that the delay cannot be attributed to the deliberate conduct of the assessee neither through intention nor

through action, Further, considering the judicial pronouncements as referred hereinabove, we condone the delay in filing the present appeal and proceed to dispose off the appeal on merits. However, a cost of ₹ 5,000, is levied upon the assessee for the delay in filing the petition, which should be paid to the account of The Nagpur High Court Legal Service Committee. In all fairness, the learned Counsel for the assessee agreed to this proposition.

6. The assessee has raised following ground of appeal:-

*"1. Under the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals) - NFAC erred in confirming the addition of Rs 1,54,05,880/- made by DCIT CPC under head "Income from Other Source" which is not permissible as per circular and that too without giving any specific reason in the intimation and also without giving own findings on this ground in appellate order under present consideration.*

*2. Under the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals) - NFAC erred in confirming the addition made by DCIT CPC simply on the basis of entry in statement 26AS without giving any consideration to the circumstances narrated by the assessee with documentary evidences establishing the fact that the income is already taxed in the hands of firm and ultimately this has resulted into double taxation on the same amount i.e. in the hands of assessee who was not the real beneficiary of receipt and also in the hands of firm, a real beneficiary of receipt.*

*3. Under the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals) - NFAC erred in not giving any finding on the grounds raised by the assessee on the issue of grievance of assessee and Department's response received.*

*4. All the grounds are without prejudice to each other.*

*5. Any other ground that may be taken up at the time of hearing or prior to that."*

7. Brief facts of the case are that the assessee filed its return of income on 30/03/2018, for the year under consideration, declaring total income of ₹ 22,04,950. During the course of processing, the CPC sent a communication (CPC/1718/G21/1816004422 dated 25-06-2018) to the assessee under the

subject "Income as per Form-26AS has not been included in computing the total income" and informed that the assessee has shown income under the head other sources (other than section 115BB and 115BBE) but amount paid/credited as per Form-26AS was ₹ 157,10,471, resulting in variance of ₹ 154,05,880. Thus, there is inconsistency between other source income in return and in Form-26AS. Further communication/adjustment notice was sent by CPC on 03/07/2018 and 29/07/2018 to the assessee for which either no response was received or the response given was not acceptable as a result of which the CPC passed order under section 143(1) of the Act on 27/03/2019, making the adjustment of the variance amount to the total income of the assessee.

8. Before the learned CIT(A), the assessee submitted that the appellant is also a partner in the partnership firm M/s. Ex-serviceman Kerosene Agency which is assessed to tax. For the transportation contract of the firm executed by the assessee as partner on behalf of the firm, TDS was made in the hands of the assessee using his PAN. The receipt is already included in the hands of the firm and hence adding the same in the hands of the assessee is incorrect and unjustifiable. Thus, the assessee has submitted that the income which is subject matter of the addition i.e., transportation charges received from HPCL picked up from Form no.26AS is already considered as an income of firm in which the assessee is a partner. The income from contract receipt has been an income of firm in earlier and later years also which is accepted by the Department in the hands of the firm. The learned CIT(A) considering

the submissions of the assessee dismissed the appeal of the assessee by observing as under: –

*"6. The contentions and submission of the appellant have duly been considered. The basic contention of the appellant is that though the TDS has been made at his hand using his PAN, the transportation contract receipt belong to Partnership Firm and since the receipt has been included in the income of the Firm taxing the same in the hands of the appellant (partner of the firm) is not correct. Section 199 of the Act provides that the any deduction of tax made as per the provisions of Ch-XVII and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made. Rule 37BA provides for the purpose of giving credit to a person other than those referred to in subsection 1 and also the assessment year for which such credit may be given. For ready reference, Rule 37BA is extracted below:*

*Credit for tax deducted at source for the purposes of section 199.*

*37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.*

*(2)27(1) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:*

*Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).]*

*(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.*

*(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.*

*(3)(i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.*

*(i) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for*

*tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.*

*(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of-*

*(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority, and*

*(ii) the information in the return of income in respect of the claim for the credit,*

*subject to verification in accordance with the risk management strategy formulated by the Board from time to time.]*

*6.1 As can be seen in sub rule (2) above, there are certain requirements to be fulfilled for the credit of tax to be allowed to a person other than the deductee if the whole or part of the relevant income is assessable in the hands of the person. The deductee has to file a declaration containing the details as mentioned under the sub- rule with the deductor and the deductor has to report the tax deduction in the name of the other person in the information relating to deduction of tax. But in the case at hand, it is not the case of the appellant that any such declaration has been filed by the appellant (deductee) with the deductor. Therefore, merely claiming that the relevant income pertains to the Firm and not the appellant in whose hand TDS has been made, will not help the case of the appellant.*

*6.2 It is also found that the appellant has filed his return of income where the details of TDS has been filled up in TDS Schedule and credit of TDS of Rs 1,90,557/- (on transportation contract) has been claimed in the computation of income (Part B-TTI) of the return. The appellant cannot claim the credit of TDS without showing the corresponding income in his return of income. Therefore, it is totally legal and justified on the part of the AO/CPC to add the receipt reflected in 26AS of the appellant for which TDS credit is claimed without including the receipt as income for the year.*

*6.3 As for the contention of the appellant that the intimation/order passed u/s 143(1) is against the provisions of the Act and is bad in law, the same is found to be not sustainable. The CPC has made the adjustment to the income of the assessee in the intimation u/s 143(1)(a) (vi) of the Act. Sub-clause (vi) of clause (a) of sub-section (1) of section 143 of the Income-tax Act, 1961 was introduced vide Finance Act, 2016, w.e.f. 1-4-2017, which provides that while processing the return of income, the total income or loss shall be computed after making adjustment for addition of income appearing in Form 26 AS or Form 16A or Form 16 (the three Forms) which has not been included in computing the total income in the return. 7. In view of above discussion, the contentions of the appellant are found to be unsustainable. Therefore, the adjustment made in the intimation by the CPC is upheld."*

9. The assessee being aggrieved by the order so passed by the learned CIT(A), filed appeal before the Tribunal.

10. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. Before us, the learned Counsel for the assessee produced a copy of financial statements of the partnership firm for the F.Y. 2016-17 relevant to the A.Y. 2017-18. It appears from the perusal of such statements there is apparent mismatch between the amount of addition of ₹ 154,05,880, and the amount of transportation of HPCL for ₹ 88,70,461, as reflected in the Profit & Loss A/c. The learned Counsel for the assessee could not give any satisfactory explanation and he referred to certain reconciliation which was not found in the paper book as mentioned in paper book Page-39. Therefore, it is apparent that the assessee has taken a very weak stand to prove that the income is reflected in the books of partnership firm. It is not clear as to whether the contract of transportation is in the name of the assessee since nothing is apparent in the paper book.

11. Apart from making bald submissions, no evidence whatsoever to buttress the claim by the learned Counsel for the assessee has been brought on record. Even it is not clear as to the stand followed in any other assessment years. It is also not manifest from the documents submitted as to how the mutual accounts between the assessee and the firm was settled of the contractual sum received from HPCL.

12. However, there may be some merit that the double taxation of some amount of income is not permissible. Bereft of facts, we are not in a position to decide on this issue. The self-serving affidavit merely reverberate the

submissions made in the course of hearing. However, the learned Counsel for the assessee submitted that he will be in a position to reconcile the discrepancies and clear all the aberrations and doubts in this connection. He has undertaken to produce all evidences given one more opportunity. In the interest of natural justice, we deem it fit to set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the Assessing Officer for denovo adjudication. Thus, all the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 06/05/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 06/05/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur