

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

&

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 3976/Mum/2023

(A.Y. 2012-13)

Johnson Joseph Dsouza Green View Wagheshwari Temple Road, Wagholi Nirmal, Nalasopara (W.) Vasai Virar-401304	Vs.	ITO 24(2)(2) Pirmal Chambers, DR SS Rao Marg, Parel, Mumbai-400012
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AHFPD2414B		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri. Himanshu Kumar

Date of Hearing	13.05.2024
Date of Pronouncement	14.05.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the appellant against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 21.08.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2012-13.

2. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Learned Income Tax Officer [hereinafter referred to as Assessing Officer] erred in opening the assessment u/s. 148 of the Income Tax Act, 1961 ("the Act"). 2. The Appellant submits that the opening of the assessment u/s. 148 of the Act is bad-in-law, illegal and the same ought to be quashed.

2. On the facts and in the circumstances of the case and in law, the Learned Assessing officer erred in passing the order u/s. 144 r.w.s 147 of the Act without providing the details / evidences / reasons recorded as referred in the assessment order.

3. On the facts and in the circumstances of the case and in law, the Learned Assessing Officer erred in adding Income Rs. 12,58,865/- on basis of Annual Information Return/Form 26AS. 2. As per Form 26AS total salary income is Rs. 8,34,730/-. However Assessing Officer has made addition based on imaginary figures. 3. The fixed deposits have been partially renewed by breaking existing Fixed Deposits and balance out of salary income earned during the year”

3. Brief facts of the case are that the assessee filed his return of income for A.Y. 2012-13 declaring total income of ₹ 5,79,630/-. The assessment was made at an income of ₹18,38,490/- after making addition on account of difference amount of ₹ 9,58,865/- between receipts as per the 26AS and declared by the assessee and also

unexplained fixed deposits of ₹ 3,00,000/- vide assessment order u/s 143 r.w.s. 147 of the Act dated 24.12.2019.

4. Aggrieved with the assessment order the assessee filed an appeal before the Ld.CIT(A)/NFAC on 16.04.2022. Vide order u/s 250 of the Act dated 21.08.2023, Ld. CIT(A) dismissed the appeal on account of being delayed by 814 days.

5. Before us, the Ld. AR submitted that the Ld.CIT(A) ought to have decided the appeal on merits in view of the reasons for delay submitted before the Ld.CIT(A) during the course of appellate proceedings.

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

7. We have considered the rival submissions of both the parties and it is noticed that the most of the period of delay is covered by the order of the Hon'ble Supreme Court, granting extension of limitation for filing appeals etc., due to Covid-19. Vide order dated 10.01.2022 of the Hon'ble Supreme Court, period from 15.03.2020 till 28.02.2022 has to be excluded for the purpose of limitation in respect of judicial and quasi-judicial proceedings. After excluding above said period of 716 days, the delay in the assessee's case comes to less than 100 days.

8. We, therefore, direct the Ld.CIT(A) to allow the condonation of delay and decide the appeal on merits after giving due opportunity of hearing to the appellant.

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

Order Pronounced in Open Court on 14.04.2024

Sd/-

(NARENDER KUMAR CHOUDHRI)
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Place: Mumbai

Date 14.04.2024

ANIKET SINGH RAJPUT/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.