

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Vikas Awasthy (JM) & Shri Amarjit Singh (AM)

I.T.A. No. 4478/Mum/2023 (A.Y. 2013-14)

Harshal Suresh Karvir 397, Sutar Ali, Chinchani Palghar-401 503. PAN : BHZPK0168E (Appellant)	Vs.	ITO, Ward-1 2 nd Floor, E Ramp Jawaharlal Nehru Stadium, Delhi Delhi-110 003. (Respondent)
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Assessee by	Shri Tanmay Milind Phadke
Department by	Shri Krishna Kumar, Sr. AR
Date of Hearing	07.05.2024
Date of Pronouncement	07.05.2024

O R D E R

Per Vikas Awasthy (JM) :-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 13.10.2023, for Assessment Year 2013-14.

2. Shri Tanmay Milind Phadke appearing on behalf of the assessee submitted that the CIT(A) has dismissed the appeal of the assessee in limine on the ground of limitation. He submitted that the assessment order was passed on 24.9.2021 i.e. during Covid-19 Pandemic period. The Hon'ble Supreme Court of India considering the hardship caused to the litigants during pandemic in suo motto proceedings had extended period of limitation in filing of the appeals upto 28.2.2022. The assessee filed the appeal before the CIT(A) on 2.2.2022. Thus, there was no delay in filing appeal before the First Appellate Authority. He further submitted that the assessment order has been framed at the back of assessee. The assessee did not receive any notice/intimation regarding reopening of assessment. Hence, the assessee could not participate in reassessment proceedings.

3. Per contra, Shri Krishna Kumar representing the Department strongly supported the impugned order and prayed for dismissing appeal of the assessee. The learned DR submitted that the assessee has been non-cooperative during the assessment proceedings, therefore the Assessing Officer was constrained to complete the assessment under section 144 read with section 147 of the Income Tax Act, 1961 (herein after referred to as 'the Act'). The appeal before the CIT(A) was filed by the assessee after the expiry of period of limitation as specified under the Act, without explaining the reasons causing delay in filing the appeal.

4. We have heard the submissions made by the rival sides and have examined the orders of the authorities below. The CIT(A) has dismissed the appeal on the ground of limitation. A perusal of assessment order reveals that the order was passed on 24.9.2021 i.e. during Covid-19 Pandemic period. The Hon'ble Supreme Court of India in suo motto proceedings in case titled Cognizance for extension of Limitation, In re. reported as 441 ITR 722 (SC) to mitigate the hardship caused by Covid-19 Pandemic directed to exclude period from 15.3.2020 to 28.2.2022 for the purpose of calculating period of limitation for filing of an appeal/suit/application under various laws, wherever, the period of limitation is prescribed. The assessee had filed the appeal on 2.2.2022 hence, there was no delay in filing the appeal before the CIT(A). The CIT(A) has erred in dismissing appeal of the assessee on the ground of limitation. Ergo, the impugned order is liable to be quashed.

5. We further find that the assessment has been framed under section 147 read with section 144 of the Act. The ld. Counsel for assessee has contended that the assessee has not received any notice for reopening the assessment or any notice thereafter. Hence, the assessee was not even aware that the assessment for A.Y. 2013-14 has been reopened. Therefore, the assessee could not participate in assessment proceedings. Taking into consideration entire facts of the case, we deem it appropriate to restore this

appeal to the Assessing Officer for making fresh assessment after affording reasonable opportunity of making submissions to the assessee, in accordance with law. The assessee shall furnish his current functional e-mail ID to the Assessing Officer for service of notice. The assessee shall positively respond to the notice served by the Assessing Officer. In case, the assessee fails to respond to the notice served by the Assessing Officer, the Assessing Officer shall be at liberty to take adverse view.

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

Order pronounced in the open court on Tuesday the 7th Day of May, 2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Vikas Awasthy)
Judicial Member

Mumbai.; Dated : 07/05/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS