

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

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
SHRI R.K.PANDA, VICE PRESIDENT**

ITA No.18/CTK/2024
Assessment Year : 2017-18

Karani Dan Chandak, Prop. M/s. Chandan Zarda Store, Jajpur Road, Jajpur	Vs.	Addl.Joint/Dy.Asst.Commissioner of Income Tax, NFAC, Delhi
PAN/GIR No.AEPPC 8155 H		
(Appellant)	..	(Respondent)

Assessee by : Shri S.C.Bhadra, CA
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 17/05/2024
Date of Pronouncement : 17/05/2024

ORDER

Per R.K.Panda, Vice President

This appeal filed by the assessee is directed against the order dated 30.11.2023 of the Id CIT(A), NFAC, Delhi for the assessment year 2017-18.

2. Shri S.C.Bhadra, Id AR appeared for the assessee and Shri SANJAY Kumar, Id CIT DR appeared for the revenue.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the order of Id. CIT(A), NFAC in not condoning the delay in filing of the appeal and thereby sustaining the addition of Rs.3,02,93,425/- made by the AO u/s.69A of the Act being unexplained cash deposit in the bank account during the year.

4. Facts of the case, in brief, are that the assessee is an individual and filed his return of income for the impugned assessment year on 07.11.2017 declaring total income at Rs.7,41,610/-. The AO reopened the assessment u/s.147 of the Act by recording the following reasons as mentioned in the assessment order :-

"The assessee individual has furnished the return of income electronically for the A. Y. 2017-18 on 07.11.2017 disclosing total income at Rs.7,41,610/-. No regular assessment has been made in this case.

1. The assessee's name has been flagged by Director of Income tax (System) in verification module of insight portal. It has been reported that during F. Y. 2016- 17, the assessee's bank account has been credited amounting to Rs.19,49,50,000/-.

3 The above information has been verified with the return of income filed by the assessee in ITBA/AST/e-filing portal for the A. Y 2017-18.

1. On verification of return of income furnished by the assessee for the A. Y. 2017- 18 vis-a-vis the information shared in insight portal, it is ascertained that the assessee has shown sales of Rs. 3,51, 43. 5751-. If the sales of Rs. 3. 51. 43. 5751- has been taken into consideration the excess amount credited in the bank account is computed at Rs.15,98,06,4251-(Rs.19.49.50.000 minus Rs. 3,51,43, 5751-). Thus the assessee has failed to disclose income of Rs.15,98,06,425/. in the return of income.

5. As the assessee has not disclosed the income of Rs. 15,98,06.425/-. I have reason to believe that the income of Rs 15,98,06, 425/-chargeable to tax has escaped assessment within the meaning or section 147 of the I. T.Act. 6. In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above. (refer paragraph 5) It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated U/s143(3) of the Act was made and the return of income was only processed u/s.143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. This case is within four years from the end of the assessment year under consideration. Hence request for necessary sanction (0 issue notice u/s.148 is being put up to Addl. Commissioner of Income tax, Range-1, Cuttack as per the provisions of section 151 of the Act."

5. Accordingly notices were issued to the assessee to which the assessee responded to the same and furnished the submission on various dates. After considering the submission of the assessee, the AO made addition of Rs.3,02,93,425/- by stating as under:-

3. Addition u/s.69A of the Act:.

3.1. In this case, as per information available with the Department, the assessee has deposited cash amounting to Rs.6,54,37,000/- in his bank accounts maintained with Axis Bank and Andhra bank during the year. These transactions are also reflected in the 26AS statement as submitted by the assessee. During the assessment proceedings, the assessee has furnished that the total turnover of the assessee was of Rs.3,51,43,575/-. If the sales of Rs.3.51,43,575/- has been taken into consideration the excess amount credited in the bank account is computed at Rs.3.02,93,425J-(Rs.6.54,37,000 minus Rs.3.51,43,575/-). Thus the assessee has failed to disclose income of RS.3,02.93,425/- in the return of income. Since no details I supporting evidences has been furnished by the assessee for proving the nature and source of such sums deposited in its bank account during the year under consideration. the sum so deposited is required to be treated as unexplained cash credits u/s. 69A of the Act in absence of its verification.

3.2 In view of the above, the amount of Rs.3,02,93,425/- is treated as unexplained money u/s. 69A of the Act and added to total income of the assessee. Penalty proceedings u/s. 271AAC of the Act are initiated.

(Addition of Rs.3,02,93,425/-)

6. Since the assessee filed the appeal before the Id. CIT(A), NFAC with a delay of 488 days, the Id. CIT(A), NFAC, rejecting the explanation given by the assessee, dismissed the appeal of the assessee on account of limitation.

7. Aggrieved with the said order of the Id. CIT(A), NFAC the assessee is in appeal before the Tribunal.

8. Ld. Counsel for the assessee submitted that the assessment in this case was completed u/s.147 r.w.s.144B of the Act. It was his submission that as the assessee has read upto 10th standard and was not well conversant with the new technology including the knowledge of computer operation, therefore, he engaged a tax professional to file his income tax return and to assist in the income tax matters and the email address of the professional was given in the profile of the appellant on the income tax portal. The assessee neither received any notice nor any communication with reference to the passing of the assessment order and the advocate did not inform about the same. Only when the assessee received the notice for recovery of tax demand, then the assessee came to know about the passing of the assessment order. It was his submission that the assessee had engaged another tax consultant to represent his case. It was in this

backdrop that the appeal could not be filed within the stipulated period and there was delay of 488 days. It was his submission that the assessee had filed a condonation petition before the Id CIT(A), which was rejected and the appellate order was passed as non-admissible. Relying on various decision, he submitted that the delay in filing of appeal before the Id CIT(A) be condoned and the appeal be restored to the file of the Id CIT(A) decide the issue on merits after affording reasonable opportunity of hearing to the assessee.

9. The Id Sr DR, on the other hand, opposed the contention of Id AR of the assessee and submitted that the appellant could have been vigilant about the fate of the assessment order being passed by the Assessing Officer. It was his submission that the delay can be condoned only if there is no gross negligence or deliberate inaction and secondly, the assessee could have furnished acceptable and cogent reasonable cause for condonation of delay in filing the appeal. Here, no such cogent reason has been given by the assessee. Therefore, Id Sr DR submitted not to interfere with the order of the Id CIT(A), NFAC.

10. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the there was a delay of 488 days in filing of the appeal before the Id. CIT(A), NFAC for which the Id. CIT(A), NFAC rejected the condonation application filed by the assessee explaining the reasons for such delay and dismissed the appeal being

barred by limitation and not considering the appeal on merit. We find from the order of the Id. CIT(A) that the assessee before him has filed a detailed submission explaining the reasons for such delay and one of the reason was due to non receipt of any notice or communication with respect to passing of the assessment order and that the advocate did not inform the assessee. It has been held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji, reported in 167 ITR 467 (SC) that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It has further been held that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. In the light of the above decision of the Hon'ble Supreme Court and considering the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of Id. CIT(A) with a direction to condone the delay in filing of the appeal and decide the issue on merits as per facts and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The appeal of the assessee is accordingly allowed for statistical purposes.

11. In the result, appeal of the assessee stands allowed for statistical purposes.

Order dictated and pronounced in the open court at the time of hearing today i.e. on 17/05/2024

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(R.K.PANDA)
VICE PRESIDENT

Cuttack; Dated 17/05/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Karani Dan Chandak, Prop.
M/s. Chandan Zarda Store, Jajpur Road, Jajpur
2. The Respondent:
Addl.Joint/Dy.Asst.Commissioner of Income Tax,
NFAC, Delhi
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack