



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

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

ITA No.118/CTK/2024
Assessment Year : 2013-14

Bijay Kumar Swain, M/s. Jholei Swain & Sons, Khajoor Godown, Chhatra Bazar, Fruit Market, Cuttack	Vs.	Income Tax Officer, NFAC, Delhi
PAN/GIR No.		
(Appellant)	..	(Respondent)

Assessee by : Shri Lalatendu Sahu, CA
Revenue by : Shri S.C.Mohanty, Id Sr DR

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

ORDER

Per R.K.Panda, Vice President

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 19.12.2023 in Appeal No.NFAC/2012-13/10150448 relating to the assessment year 2013-14.

2. The appeal is time barred by 17 days. The assessee has filed a condonation petition supported by an affidavit, inter alia, stating that due to his high blood pressure and prolonged illness, he was advised by the doctor to take one month rest. Therefore, there was a delay of 17 days in

filing of the appeal before the Tribunal, which was not intentional. Ld Sr DR did not raise any serious objection to the condonation of delay.

3. After going through the condonation petition, we find that the assessee has a reasonable cause for not filing the appeal within the stipulated time. The Hon'ble Allahabad High Court in the case of Ganga Sahai Ram Swarup and another vs. ITAT, 271 ITR 512 (All) held that the delay of short period should be condoned because the assessee was not going to gain anything out of it. We, therefore, condone the delay of 17 days in filing the appeal before the Tribunal and admit the appeal for hearing.

4. Although a number of grounds have been raised, however, all these relate to the exparte order of Id CIT(A), NFAC in confirming the addition of Rs.60,54,007/- made by the Assessing Officer u/s. 69A of the I.T.Act, 1961 being the cash deposit in the bank account.

5. Brief facts of the case are that the assessee is an individual and is a non-filer of income tax return. It was observed from the individual transaction statement (ITS) available with the department that the assessee has made cash deposit of Rs.60,54,007/- in his Saving Bank account and earned interest income of Rs.11,97,600/-. Therefore, the Assessing Officer, after recording reasons, reopened the case of the assessee u/s.147 of the Act and thereafter issued notice u/s.148 of the Act on 31.3.2021. Since the

assessee did not file any return in response to the same and did not respond to the subsequent notice u/s.142(1) of the Act, the Assessing Officer issued a show cause notice u/s 144 of the Act asking the assessee to explain as to why the assessment should not be completed u/s.144 of the Act by making the addition of the same. Thereafter, the assessee filed the return of income on 12.3.2022 i.e. at the fag end of the time limit declaring total income Rs.4,08,200/-.

6. Since the assessee thereafter did not file any response to the subsequent notice issued, the Assessing Officer in the order passed u/s.147/144B of the Act made addition of Rs.64,62,210/- u/s. \69A being the cash deposit in the bank account of the assessee as unexplained.

7. Since the assessee did not appear before the Id CIT(A) despite number of opportunities granted, the Id CIT(A) NFAC in the exparte order passed sustained the addition made by the Assessing Officer.

8. Aggrieved with the impugned order, the assessee has filed appeal before the Tribunal.

9. Ld Counsel for the assessee submitted that due to death of the mother of the assessee and subsequent sickness of the assessee who is a senior citizen, the assessee could not produce the necessary evidences, leading to these unfortunate events. He submitted that if an opportunity is

granted, the assessee would be in a position to file the requisite details before the lower authorities to substantiate his case.

10. On the other hand, Id Sr DR strongly opposed submission of Id A.R. of the assessee and submitted that despite number of opportunities granted, the assessee did not bother to file necessary evidence before the Id CIT(A) and even before the AO. He accordingly submitted that the addition made by the AO and sustained by the Id CIT(A) should be upheld.

11. We have considered the rival submissions and perused the record. On perusal of the assessment order, we find that due to non-submission of details to the satisfaction of the Assessing Officer regarding the source of cash deposits in the Saving Bank, the Assessing Officer made the addition of Rs.64,62,210/- as unexplained money u/s.69A of the Act. We find that despite number of opportunities granted by the Id CIT(A), the assessee did not make any submission for which the Id CIT(A) was constrained to pass the exparte order. It is the submission of Id AR that given an opportunity, the assessee is in a position to substantiate his case by filing the requisite details. Considering the totality of the facts of the case, and in the interest of justice, we deem it proper to restore the matter to the file of the Id CIT(A) with a direction to give one last opportunity to the assessee to substantiate his case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to make his submission on the appointed date without seeking any adjournment under

any pretext failing which, the Id CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. 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 : Bijay Kumar Swain,
M/s. Jholei Swain & Sons, Khajoor Godown,
Chhatra Bazar, Fruit Market, Cuttack
2. The Respondent: Income Tax Officer, 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