

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोराड, लेखा सदस्य
के समक्ष

Before
DR. MANISH BORAD, ACCOUNTANT MEMBER

**I.T.A. No.: 352/KOL/2024
Assessment Year: 2013-14**

***Bipinbhai Motibhai Patel.....Appellant
[PAN: AGBPP 4049 F]***

Vs.

ITO, Ward-11(1), Kolkata.....Respondent

Appearances:

Assessee represented by: Deepak Kr. Mohata, FCA.

Department represented by: L.N. Dash, Sr. DR.

Date of concluding the hearing : May 6th, 2024

Date of pronouncing the order : May 22nd, 2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi, [in short Id. 'CIT(A)'] dated 29.12.2023 arising out of the Assessment Order framed u/s 147 read with Section 144 of the Act dated 12.08.2021.

2. The assessee is in appeal before this Tribunal raising the following grounds of appeal:

“1. For that on the fact and in the circumstances of the case the Ld. CIT (A) erred in rejecting the appeal on account of delay in filing appeal without seeking and/or providing an opportunity for submission of further details or evidences for the delay leading to violation of principles of natural justice.

For that on the facts and in the circumstances of the case the Ld. CIT(A) erred in upholding the action of the assessing officer in the order passed u/s 147 by invoking section 69 without considering the facts that no such transaction of sale & purchase of investment was ever undertaken by the assessee.

For that on the facts and in the circumstances of the case the order passed u/s 147 was without application of mind which can be evident from the various errors in the tax calculations.

2. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”

3. The assessee has raised two-fold contentions; firstly, that Ld. CIT(A) erred in dismissing the assessee's appeal in limine on account of delay in filing the appeal before Ld. CIT(A). Second contention is on merits wherein it is stated that even though the assessee had not entered into any transaction of long-term capital gain/short-term capital gain from purchase-sale of Twenty First Century India Ltd. But still the addition has been made in the hands of the assessee.

4. Ld. D/R vehemently argued supporting the orders of both the lower authorities.

5. We have heard rival contentions and perused the records placed before us. We notice that the assessee is an individual who

filed his regular return of income for AY 2013-14 on 30.07.2013 declaring total income of Rs. 5,60,540/- which was processed u/s 143(1) of the Act. Thereafter, based on the information about alleged bogus LTCG from the transaction of trading in alleged penny stock company namely Twenty First Century India Ltd. to the tune of Rs. 6,16,640/- case of the assessee was re-opened. Notice u/s 133(6) of the Act was issued. But not replies were received. Though the assessee filed written submissions, as claimed in the paperbook, however, ld. AO did not consider the same and for alleged non-compliance, passed the best judgment assessment order u/s 147 read with Section 144 of the Act making addition of Rs. 6,16,640/- and assessing income at Rs. 11,77,180/-. We further note that the assessee challenged these additions before ld. CIT(A) but on account of nation-wide lockdown due to COVID pandemic, there was a delay of 58 days in filing the appeal. We note that the assessment was framed on 12.08.2021 which fall during the COVID restrictions period from March, 2020 to March, 2022 and on account of this COVID restrictions, there was a delay of 58 days. However, ld. CIT(A) even though passing the order which is running into almost 12 pages but without dealing into the merits of the case, did not condone the delay of 58 days which was *prima facie* on account of COVID restrictions and dismissed the assessee's appeal in limine. In our view, ld. CIT(A) ought to have condoned the delay and adjudicated the appeal on merits.

6. We, after considering the fact that the impugned order is dismissed for delay in filing the appeal and that the assessment

order is also framed u/s 144 of the Act and also considering that the assessee who is a senior citizen is claiming that he has not entered into any transaction of purchase-sale of scrip namely Twenty First Century India Ltd., interest of justice would be achieved if the issue on merit is restored to the file of the AO for *de-novo* adjudication. We therefore, condone the delay in filing appeal before Id. CIT(A) and remit the issue to the file of Id. AO for *de-novo* adjudication. Also, the assessee is directed to file an affidavit in support of his contention that no such transaction in the scrip of Twenty First Century India Ltd. has been entered in to by him during the year under consideration and further, any other details, if necessary, may be filed in support of the grounds raised before us. Id. AO, after considering all these details and after giving necessary opportunity of being heard to the assessee, shall decide in accordance with law.

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

Order pronounced in the open Court on 22nd May, 2024.

Sd/-

[Manish Borad]
Accountant Member

Dated: 22.05.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Bipinbhai Motibhai Patel, 6A, Naba Kailash 55/4
Ballygunge Circular Road, Kolkata, West Bengal, 700 019.**
- 2. ITO, Ward-11(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata