



BEFORE HON'BLE S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.368/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

Patodia Forgings and Gears Ltd.
105/2, Village Mahalunge,
Chakan Rd., Chakan, Pune-410501
PAN : AAACP9266C

..... *अपीलार्थी / Appellant*

बनाम / V/s.

Asstt. Commissioner of Income Tax,
Circle-8, Pune

..... *प्रत्यर्थी / Respondent*

द्वारा / Appearances

Assessee by : Mr Sarvesh Khandelwal ['Ld. AR']

Revenue by : Mr Sourabh Nayak ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 22/05/2024

घोषणा की तारीख / Date of Pronouncement : 22/05/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

This appeal is filed u/s 253(1)(a) of the Income Tax Act ['the Act'] by the assessee challenging the order passed by National Faceless Appeal Centre, Delhi ['NFAC'] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1058177186(1) dt. 23/11/2023 u/s 250 of the Act.

2.1 Briefly stated facts anent to the case are that; the assessee company filed its return of income ['ITR'] u/s 139(1) on 31/10/2018 declaring total income of ₹3,54,10,010/-. In a scrutiny assessment framed u/s 143(3) of the Act on 14/04/2021 the Ld. AO made two additions towards (i) Duty drawback and (ii) part disallowance u/s 80IA deduction claimed.



2.2 The assessee assailed the denial of full claim of 80IA deduction and amount of duty drawback brought to tax in an appeal before first appellate authority on 06/07/2022 that is with a delay of 418 days. In absence of affidavit explaining reasons beyond aforesaid delay and a petition seeking condonation of such delay, the Ld. NFAC came to dismiss the appeal *in limine* by relying on the catena of decisions.

2.3 Aggrieved assessee brought up this appeal challenging the action of tax authorities on violation of principle of natural justice and on merits.

3. We have heard rival contentions and perused the material placed on record in light of rule 18 of ITAT-Rules.

4. At the outset, after vouching sufficiency of reasons beyond undeliberate 32 days delay in instituting the present appeal, we after placing reliance on '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' reported at 167 ITR 5 (SC), in the larger interest of justice deem it fit to condone the same as '*none should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal.*'

5. We noted that against the order of assessment passed on 14/04/2021 the appeal before the Ld. NFAC was filed on 06/07/2022 with a delay of 418 days. The appeal admittedly was filed without accompanying therewith a



petition for condonation of delay stating therein the circumstance due to which said delay was caused. Faced with the situation, the Ld. NFAC rejected to entertain the appeal on a technical ground of assessee's failure to file petition for condonation. However we have note that, any period of delay in following between dt. 15/03/2020 to dt. 28/02/2022 in view of the direction of Hon'ble Apex Court rendered in MA-21/2022 stands excluded from the period of limitation. The effective delay as calculated & confirmed by both the rival parties was less than 40 days as against the delay computed by the Ld. NFAC.

6. Insofar as the non-filing of petition for condonation and affidavit explaining the reasons beyond afforested effective delay caused in instituting the appeal before the first appellate authority which solely resulted into dismissal of appeal is concerned it is suffice to say such non-filing is technical but curable defect and in all the fairness the assessee deserves an opportunity to cure and contest its case on merits.

7. We are of the view that, the appellate remedy or forum is created by the statute is to rest the dispute and not to accelerate for higher forum, therefore having regard to present facts and circumstances, placing reliance on recent judgement of Hon'ble Supreme Court rendered in 'Raheem Shah & ANR Vs Govind Singh & Ors' [CIVIL APPEAL NO.4628 OF 2023], we are heedful to state that, while dealing with tax litigation, the Ld. NFAC being



a quasi-judicial authority was expected to adopt justice oriented approach rather resorting to iron-cast technical one wherein the Ld. NFAC came to dismiss the appeal of the assessee *in limine* on a hyper-technical ground without putting the assessee to notice.

8. In view hereof, without offering any comments on the merits of the case, we deem it fit to set-aside the impugned order and remit the file of Ld. NFAC with a direction deal therewith *de-nova* in accordance with applicable law and pass a speaking order in terms of section 250(6) of the Act. Needless to state the Ld. NFAC shall accord not more than three opportunities to the assessee to represent his case by filing a petition for condonation & explain the reasons thereof to the satisfaction of the first appellate authority and also such evidential material in support of claim of made in the return of income as required under the application laws.

9. Resultantly, the appeal is ALLOWED FOR STATISTICAL PURPOSE.

U/r 34 of ITAT Rules, the order pronounced in the open court on this Wednesday 22nd day of May, 2024.

S/d-

S. S. GODARA
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 22nd day of May, 2024.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The Concerned CIT (MH-India)
5. DR, ITAT, Bench 'B', Pune

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A)-NFAC, Delhi (India)
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.