

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4359/MUM/2023
(Assessment Year: 2012-2013)**

Purvi Vasantrai Mehta,

Flat No. 302, B Wing,
Windsor Court, Raheja Reflections,
Thakur Village, Kandivali (East),
Mumbai – 400006
PAN : [BPYPM2686E]

.....

Appellant

**Income Tax Officer,
Ward 3(3)(1), Mumbai,**

Air India Building, Nariman Point,
Mumbai - 400021

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Shri Kiran Mehta
For the Respondent/Department : Shri H.M. Bhatt

Date

Conclusion of hearing : 14.05.2024
Pronouncement of order : 30.05.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 09/10/2023, passed by the Ld. Commissioner of Income Tax (Appeals)-57, Mumbai for the Assessment Year 2012-13, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order, dated 30/03/2018, passed under Section 271(1)(c) the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

"1. *In the facts and circumstances of the case and in law, the learned CIT(A) erred in not condoning the delay of 65 days in filing the appeal before him and dismissing the appeal.*

2. *In the facts and circumstances of the case and in law the learned CIT(A) erred in not dealing with the appeal on merits.*
3. *In the facts and circumstances of the case and in law it is submitted that the penalty of Rs. 12,31,784/- levied under Section 271(1)(c) of the Act was not tenable and ought to have been deleted."*
3. The relevant facts in brief are that the assessment was framed on the Appellant vide Assessment Order, dated 21/03/2015. The Assessing Officer also initiated penalty proceedings under Section 271(1)(c) of the Act. In quantum appeal filed by the Appellant before CIT(A) against the Assessment Order, dated 21/03/2015, the CIT(A), vide order dated 23/01/2017, granted relief to the Appellant while directing the Assessing Officer to consider the alternative plea of the Appellant pertaining to deduction of INR 40,00,000/- claimed by the Appellant under Section 54EC of the Act. However, on 30/03/2018, the Assessing Officer passed the penalty order under Section 271(1)(c) of the Act holding that the Appellant had furnished inaccurate particulars of income while claiming deduction of INR 40,00,000/- under Section 54EC of the Act.
4. Being aggrieved, the Appellant preferred appeal before CIT(A) against the aforesaid penalty order, dated 30/03/2018, which was dismissed vide order, dated 09/10/2023, passed by the CIT(A) on the ground of delay of 65 days in filing the appeal.
5. Being aggrieved, the Appellant has preferred the present appeal.
6. The Ld. Authorised Representative for the Appellant appearing before us submitted that the CIT(A) had dismissed the appeal as being barred by limitation holding that no reasons were furnished by the Appellant for delay in filing the appeal despite noting in paragraph 5 and 5.1 that delay in filing the appeal was on account of the fact that the Appellant was non-resident Indian and therefore, it took time for

the Appellant to obtain digital signatures and arrange for filing appeal in India. Further, it was submitted that the Appellant was also traveling at the relevant time and therefore, could not take up steps to get the appeal filed in India.

7. Per Contra, the Ld. Departmental Representative submitted that the Appellant had failed to furnish the details and/or documents to corroborate the submissions on delay in filing the appeal. Taking note of this, the CIT(A) dismissed the appeal on the ground of delay in filing the appeal.
8. We have considered the rival submissions and perused the material on record. It is undisputed fact that the Appellant is non-resident Indian. It was explained by the Appellant that appeal was filed in India after obtaining necessary documents and digital signature which took time. Further, the Appellant was travelling at the relevant time. This resulted in delay in filing the appeal. Therefore, in our view, the Appellant had sufficient cause for not filing the appeal within the prescribed period of 30 days before the CIT(A). Further, we note that the very issue on which the penalty was levied by the Assessing Officer under Section 271(1)(c) of the Act was set aside to the file of Assessing Officer vide order, dated 23/01/2017, passed in quantum appeal by the CIT(A). Therefore, there was no basis for levy of penalty. In view of the aforesaid, remanding the issue raised in present appeal back to the file of CIT(A) for adjudicating the penalty appeal on merits would be an empty formality. It is apparent that in view of the aforesaid facts no penalty could have been levied under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income in respect of exemption claimed by the Appellant under Section 54EC of the Act. Accordingly, the order, dated 09/10/2023, passed by the CIT(A) as well as the Penalty Order, dated 30/03/2018, levying penalty under Section 271(1)(c) of the Act is set aside. Thus, penalty of INR 12,31,784/- levied by Assessing Officer

under Section 271(1)(c) of the Act is deleted. Ground No.1, 2 and 3 raised by the Assessee are allowed.

9. In result, appeal preferred by the Assessee is allowed.

Order pronounced on 30.05.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.05.2024
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai