

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 680/MUM/2024
Assessment Year: 2018-19**

Neeta Roshan Kewalramani,
Plot No. C-30, Road No. 16,
Wagle Indl. Estate,
Thane-400604.

**PAN NO. AZPPK 3256 J
Appellant**

AO, Thane,
Ward 3(1), Qureshi Mansion,
Gokhale Road,
Thane-400602.

Vs.

Respondent

Assessee by : Mr. Sanjay Dwivedi
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 28/05/2024
Date of pronouncement : 30/05/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 28.12.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, challenging the action of the Ld. CIT(A) dismissing the appeal as un-admitted.



2. At the outset, the Ld. counsel for the assessee referred to Ground No. 3 of the appeal of the assessee, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has treated the appeal filed by the assessee as beyond the time and in absence of any application for condonation of the delay, he dismissed the appeal as unadmitted. The Ld. counsel for the assessee however, submitted that order of the Ld. Assessing Officer is dated 30.03.2021 whereas the appeal before the CIT(A) has been filed on 31.12.2021. The fact of the date of issue of the order by the Assessing Officer and filing of the appeal by the assessee are not disputed by the ld DR. The Ld. counsel for the assessee submitted that the period between 31.03.2021 and 30.03.2021 falls within the period i.e. Covid Pandemic period, where the limitation for filing appeal has been extended by the Hon'ble Supreme Court in Civil Appeal No. Civil appeal no. 21 of 2022 in Miscellaneous Application No. 655 of 2021 in *suo-motu* writ petition (C) No. 3 of 2020. The CBDT also following the finding of the Hon'ble Supreme Court extended the limitation for filing appeal before the ld CIT(A) during the period of the Covid Pandemic. Accordingly, there is no delay in filing the appeal and therefore, same should be admitted for adjudication and matter should be restored back to the Ld. CIT(A) for deciding afresh.

3. We have heard rival submission of the parties and perused the relevant material on record. It is undisputed that the assessment order has been passed by the Ld. Assessing Officer on 30.03.2021



and appeal has been filed by the assessee before the Ld. CIT(A) on 31.12.2021. This period falls within the period excluded by the Hon'ble Supreme Court (supra) for considering limitation. The relevant finding of the Hon'ble Supreme Court is reproduced as under:

“5. Taking into consideration the arguments advanced by learned counsel and the Impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, **it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.**
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.
- IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

3.1 Further, the CBDT vide circular No. 10/2021 dated 25th May 2021 has clarified as under:

Circular No. 10.2021

F.NO.225/40/2021/ATA-II



Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 25 May, 2021

Subject: Clarification regarding the limitation time for filing of appeals before the CIT(Appeals) under the income-tax Act, 1961(the Act)

1. The Central Board of Direct Taxes has issued Circular No. 8 of 2021 on 30 April 2021 providing various relaxations till 31 May 2021 including extending time for filing the appeals before CIT(Appeals). At the same time, the Hon'ble Supreme Court vide order dated 27 April 2021 in *Suo Motu Writ Petition (Civil) No.3 of 2020* restored the order dated 23 March, 2020 and in continuation of the order dated 8 March, 2021 directed that the period(s) of limitation, as prescribed under any General or Special Laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders

2. The Central Board of Direct Taxes, clarifies that if different relaxations, are available to the taxpayers for a particular compliance, the taxpayer is entitled to the relaxation, which is more beneficial to him. Thus, for the purpose of counting the period(s) of limitation for filing of appeals before the CIT(Appeals) under the Act, the taxpayer is entitled to a relaxation which is more beneficial to him and hence the said limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* vide order dated 27 April 2021.

Sd/-
(Prajna Paramita)
Director to the Government of India.

3.1 The period of delay pointed out, the Ld. CIT(A) falls within the period excluded by the Hon'ble Supreme Court for the purpose of limitation and therefore, there is no delay in filing the appeal. Accordingly, we direct the Ld. CIT(A) to admit the appeal and decide the addition in merit after providing adequate opportunity of being heard to the assessee. Since, we have already restored the matter back to the file of the Ld. CIT(A), the grounds raised on merit are not required to be adjudicated upon at this stage. The appeal of the assessee is accordingly allowed for statistical purposes.



4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/05/2024.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/05/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai