

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

आयकर अपीलीय अधीकरण, न्यायपीठ - "SMC" कोलकाता,

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

(समक्ष: श्री मनीष बोरड, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य)

**ITA No.275/Kol/2024
Assessment Year: 2015-16**

Rajendra Anchalia 12/1, Hunger Ford Street, Kolkata-700017. (PAN: ACSPA0012G)	Vs.	Income Tax Officer, Ward- 32(4), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Anil Kochar, AR

Respondent by : Shri Kapil Mondal, Addl. CIT, DR

Date of Hearing : 22.05.2024

Date of Pronouncement : 03.06.2024

ORDER

PER SONJOY SARMA, JUDICIAL MEMBER:

This appeal has been preferred by the assessee against the order dated 30-04-2019 of the Ld. Commissioner of Income-tax, Appeals-9, Kolkata [hereinafter referred to as 'CIT(A)'], passed u/s. 250 of the Income-tax Act, 1961 hereinafter referred to as 'the Act' for the AY 2015-16.

2. The assessee has raised the following grounds of appeal before this Tribunal:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-Law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT(A) while passing order U/S 250 ought to have taken note of and properly considered statement of facts and ought not to have simply dismissed the appeal due to non-compliance on the part of the appellant.

3. For that the appellant had duly furnished evidences pertaining to Rs.5,00,000/- before the A.O. and that the Ld. CIT(A) ought not to have confirmed this addition.

4. For that the Ld. CIT(A) ought to have allowed the contentions raised by the appellant in connection with the disallowance made by the A.O. u/s 14A read with Rule 8D.

5. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.”

3. At the time of hearing, it is noticed that there is a delay of 1689 Days in filing the appeal before the Tribunal and an affidavit dated 12.02.2024 showing the reasons for the delay is available in file wherein it has been stated that the income tax matters were being looked after by assessee's father Mohanlal Anchalia. He could not be attended on the pretext of his ill health. Subsequently, he was hospitalized at bell View Clinic and he breathed his last on 11.03.2019. Thereafter, assessee was advised to submit an appeal before the Tribunal praying for condonation of delay. It is further stated that the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3 of 2020 vide order dated 10.01.2022 has extended the limitation period for filing of applications which, inter alia, included applications under the Income-tax Act, 1961 in relation to the orders passed on or after 15.03.2020 up to 28.02.2022. The Hon'ble Supreme Court had directed that in computing the period of limitation for any appeal or application, the period from 15.03.2020 till 28.02.2022 shall stand excluded and additionally a limitation period of 90 days from 01.03.2022 shall be available. Consequently, the period of limitation u/s. 253(3) in the present case stood extended to 30.05.2022. The delay in presenting the present appeal is, therefore, 1084 days which deserves to be condoned. He also submitted that the delay in submission of the appeal before the Tribunal may kindly be condoned because the default is not at all willful or intentional.

4. We after hearing the submission of both the sides and perusing the material available on record are of the opinion that the assessee has explained the reasons for late filing of appeal which seems to sufficient and reasonable. Moreover, making the appeal time barred has not been used by the assessee as a tactics to avoid the litigation with the Revenue because such strategy would not give any benefit to the assessee in this type of litigation. Therefore, we condone the delay in filing the appeal by the assessee.

5. Brief facts of the case as culled out from the records are that the return of income was filed on 30.09.2015 declaring total income of Rs.16,06,120/-. Assessment was framed by the AO on 29.12.2017 determining the total income u/s. 143(3) of the Act at Rs.22,08,730/-. In compliance to the notices issued u/s. 143(2) and 142(1) of the Act, details called for along with submissions were filed. The AO made the additions of Rs.95,539/-, Rs. 500,000/- and Rs.7,062/-. Aggrieved, assessee preferred appeal before the Ld. CIT(A) who dismissed the appeal of the assessee as none appeared on behalf of the assessee at the time of appellate proceedings. Aggrieved, assessee is in appeal before the Tribunal.

6. After hearing the rival submissions and perusing the orders of the lower authorities, we find that the Ld. CIT(A) has confirmed the order of the AO ex parte since none appeared on behalf of the assessee at the time of hearing before him. In the appellate order, the Ld. CIT(A) has observed as under:

“In this case, notice u/s. 250 was issued on 11.02.2019 by which date of hearing was fixed for 26.02.2019 but neither anyone attended nor any written reply was received on the part of the appellant.

However, fresh notice for hearing was fixed for 23.04.2019 but neither anyone attended nor any written reply was received on the part of the appellant nor any

request for adjournment was received. It appears that the appellant is not interested in pursuing the appeal.

Since there is no compliance during the appellant proceedings and there is no new fact/details available for consideration, I do not find any infirmity in the AO's order. Therefore, appeal is dismissed."

7. In this respect, we note that Section 250(6) cast a duty on Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. In the present case before us, even though assessee has not made its submissions along with supporting documents before the Ld. CIT(A). However, Ld. CIT(A) while disposing of the appeal by not looking into the assessment records and simply dismissed appeal of the assessee without discussing on merits of the case. On a specific query by the Bench to the Ld. Counsel as to why the matter be not remitted back to the file of Ld. CIT(A), nothing objectionable was submitted. Even Ld. DR had no objection on the same. Accordingly, we find it proper to remit the matter back to the file of Ld. CIT(A) for meritorious disposal of the grounds taken by the assessee, by passing a speaking order. Needless to say that assessee be given reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

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

Order is pronounced in the open court on 3rd June, 2024

Sd/-

(Dr. Manish Borad)
ACCOUNTANT MEMBER

Sd/-

(Sonjoy Sarma)
JUDICIAL MEMBER

Kolkata, Dated: 03.06.2024
JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. CIT(A)-9, Kolkata.
4. The CIT-
5. The DR, ITAT, Kolkata Bench, Kolkata.

//True Copy//

By Order

Assistant Registrar,
ITAT, Kolkata.