

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. 770/MUM/2024 (A.Y: 2018-19)

Bhagwatilal Nanalal Jain	Vs. Mum-C-(212) (1)
8, Patel Building, M. G. Road, Mulund, West, Mumbai 400 080.	Income Tax Appellate Tribunal, MK Road, New Marine Lines, Mumbai 400 002.

(Appellant)

(Respondent)

Assessee Represented by	:	Shri. Rajesh Shah
Department Represented by	:	Shri. Ashok Kumar Ambastha- Sr. AR.
Date of conclusion of Hearing	:	30.05.2024
Date of Pronouncement	:	07.06.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 05.01.2024 of Learned Commissioner of Income Tax (Appeals), ADDL/JCIT (A)-4 Kolkata [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2018-19, wherein the assessee’s appeal was dismissed as not admitted.
2. The brief facts giving rise to the present appeal are as under: -



3. The assessee filed return of income electronically on 23.10.2018 declaring total income of Rs. 46,95,330/-. The case was selected for scrutiny and accordingly notice u/s. 143(2) of "the Act" was given. Subsequently, the notice u/s. 142(1) of "the Act" was also issued alongwith a detailed questionnaire requiring compliance on or before 23.11.2020. The assessee filed requisite documents on e portal. The assessee is engaged in trading of gold silver and diamond jewellery in his individual capacity. Vide notice no. DIN ITBA/AST/F/142(1)/2020-21/1030333374(1), the assessee was required to explain the following: -

1. *"Your bank account No. 0173102000019248 & account No. 0173102000019275 (with IDBI Ltd.), it is observed that the cumulative credit turnover Rs.4,94,22,890/- and Rs.9,10,39,108/- and cumulative debit turnover Rs.3,68,03,093/- and Rs.9,10,01,665/- respectively. You are requested to clarify the above transactions with documentary evidence.*
 2. *Furnish the copy of bank accounts in which the demand drafts/cheque/RTGS was deposited the receipts of sale of property received from purchaser.*
 - a. *Area (plot and Built-up) and location of the houses.*
 - b. *Market value as per Registrar's office on the date of sale.*
 - c. *Sold for — date and mode of payment.*
 - d. *Name & complete address of purchaser(s).*
 - e. *Furnish papers of registry of sale and purchase.*
 - f. *Furnish computation of capital gains."*
4. However, appellant/assessee failed to furnish the required information hence, the assessment was completed u/s. 144 of "the Act". Accordingly, an amount of Rs. 1,88,98,000/- was assessed as long-term capital gain and brought to tax accordingly. Penalty notice u/s. 270A of "the Act" was also issued.



5. Against this order dated 24.03.2021 of Learned Assessing Officer, Mum-C-(212) (1) (hereinafter referred to as the “AO”), the assessee preferred an appeal u/s. 250 of the Act before the Ld. CIT(A). The appeal was filed on 22.01.2022 against the order dated 24.3.2021. The appellant/assessee has also filed an application for condonation of delay. The Ld. CIT(A) in the impugned order noted that the condonation application has been filed without any supporting evidence, therefore, the delay of 264 days from 23.4.2021 to 12.01.2022 remained unexplained. The Ld. CIT(A) dismissed the appeal as not admitted.
6. The appellant/assessee is in appeal before the Tribunal on the following grounds:
1. *“The Assessing Officer has erred in assessing total income of Rs. 2,40,15,438/ instead of declared income of Rs.46,98,327/- in Return of Income.*
 2. *The Assessing Officer has Cued in adding Rs 2,71,556/- being the interest paid.*
 3. *The Assessing Officer has erred in adding Rs 1,88,98,000/- being the sales proceed of property, the entire transaction was not belongs to assessee.*
 4. *The learned Assessing Officer erred in passing ex-parte order on 24th March, 2021 whereas window for online submission was opened on 25/03/2021 without the order.*

RELIEF CLAIMED

1. *Looking to the facts and circumstances of the case the additions made by the Learned Assessing Officer be deleted and Income be assessed at income of Rs.46,98,327/- as returned by the appellant.*



2. *Disallowance of interest paid amounting to Rs 2, 71,556/- be deleted 3 Additions made for amounting to Rs 1,88,98,000/- property was not belongs to assessee be deleted.”*
7. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. AR has argued that the delay of 264 days from 23.04.2021 to 12.01.2022 was required to be condoned due to lockdown/covid pandemic. The Ld. Counsel referred and relied upon the judgment of the Hon’ble Supreme Court of India Suo Moto Writ Petition (C) No. 3 of 2020, order dated 10.01.2022, wherein the Hon’ble Supreme Court has pleased to direct *“it is directed that the period from 15.3.2020 till 28.2.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial and quasi-judicial proceedings”*.
8. It is therefore argued by the Ld. AR that the appellant/assessee is entitled to condonation of delay on the basis of direction issued by the Hon’ble Supreme Court of India referred above.
9. The Ld. DR on behalf of the revenue has submitted that the Tribunal may consider the condonation of delay as per direction of Hon’ble Supreme Court and the revenue has no objection if the matter is restored to the file of the Ld. CIT(A) for deciding the same on merit.
10. We have considered the rival submissions and examined the record While refusing to condone the delay the Ld. CIT(A) in the impugned order has observed as under:

“on careful perusal of the above, it is seen that the condonation petition has been filed without any supporting evidence. The delay is from 23/04/2021 to 12/01/2022, when the lockdown was from 05/04/2021 to 15/06/2021. It doesn’t explain the delay of 264 days.”



11. Thus, on perusal of this finding and observation of the Ld. CIT(A) it is to be noticed that the said observation of the Ld. CIT(A) is not in consonance with the order of the Hon'ble Apex Court, wherein the Hon'ble Supreme Court of India has directed that the period from 15.03.2020 till 28.03.2022 shall stand excluded for the purpose of limitation.
12. Accordingly, for the above reasons, and the submissions on behalf of the parties the delay in filing the appeal before the Ld. CIT(A) stands condoned. The matter is restored to be filed of the Ld. CIT(A) to decide the same on merit. The appellant/assessee shall approach the Ld. CIT(A) within 60 days from the date of this order for presenting his case on merit.
13. The appeal is disposed off accordingly on the above terms for statistical purposes.
11. In the result, appeal filed by the assessee is allowed in the above terms for statistical purposes.

Order pronounced in the open court on 07.06.2024

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

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

Mumbai / Dated 07.06.2024
Karishma J. Pawar, (Stenographer)



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

(Asstt. Registrar)
ITAT, Mumbai