

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "SMC", LUCKNOW**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.104/LKW/2024  
A.Y. 2020-21

Khaleeque Ahmad Nayvar, Flat No. 202, Fortune View Apartment, 301/4 Sector-9, Vikas Nagar, Lucknow. PAN AFAPN 1234Q	Vs.	CPC, Banglore
(Appellant)		(Respondent)

Appellant by	None present for the assessee
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	09/04/2024
Date of pronouncement	29/04/2024

**ORDER**

This appeal is preferred by the assessee against the order dated 12.08.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year (AY) 2020-21.

2. The brief facts of the case are that the assessee is an individual by status who has worked for Belgium Shipping Company. The assessee filed its return of income on 10.01.2021 declaring total income of Rs.49,05,739/-. While processing the return u/s. 143(1) of the Income Tax Act, 1961 (hereinafter called

the 'Act'), the Centralized Processing Centre (CPC), Bengaluru did not allow the deduction of Rs.13,35,591/- claimed by the assessee u/s. 90/90A of the Act and a tax demand of Rs.16,83,320/- was raised without assigning any reason.

3. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed.

4. Now, the assessee has approached this Tribunal challenging the action of the NFAC by raising the following grounds of appeal:

*"1. The Learned Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred to as the Ld CIT-A) has erred on facts and in law in confirming the action of the Ld. A.O. in not allowing the credit of already paid taxes of Rs. 13,35,591/-in Belgium by observing that FORM 67 was not filed by the appellant.*

*2 The Ld. CIT-A is not justified at all in not allowing the credit of already paid taxes of Rs.13,35,591/-paid in Belgium without appreciating the law that a procedural mistake [non filing of FORM 67 along with ITR] does not debar the appellant from claiming the eligible credit of already paid taxes which was claimed as per the provisions of the Indian Income Tax Laws and the DTAA entered into in between India and Belgium while the other facts related to the case are not in dispute.*

*3. The Ld. CIT-A has erred on facts and in law in not appreciating the law that that the provisions contained u/s 143(1) of the Act does not empower the Assessing Officer to make any addition / disallow the claim made which is in*

*the nature of debate and discussions and also requires detailed explanations and submissions from the appellant.*

*4. The appellant reserves its right to advance such other grounds before or at the hearing, which it may consider fit and appropriate, for which it craves leave to amend, alter or otherwise modify the grounds appearing hereinbefore with the kind permission of the CIT(A).”*

5. None was present on behalf of the assessee when the appeal was called out for hearing. However, looking into the facts of the case, I proceed to adjudicate the appeal ex-parte qua the assessee.

6. It is seen that the present appeal before the Tribunal was filed belatedly and that there is a delay of 133 days in filing of the appeal. As per the application for condonation of delay, it has been submitted that the delay was due to the fact that the assessee was employed in Merchant Navy and was on Ship and the appeal filed by him before the Id. First Appellate Authority was disposed of vide order dated 12.08.2023 and the assessee was not aware about this order. When the assessee returned to India and contacted his C.A./Advocate, it was found that the Id. First Appellate Authority had already disposed of his appeal on 12.08.2023 and thereafter, he immediately asked his lawyer to prepare and file the appeal before the Tribunal. It has been

submitted that there is no mala-fide intention in not filing the present appeal on or before the due date. It is prayed that the delay of 133 days may kindly be condoned and the appeal be admitted for hearing.

7. Per contra, the Id. Senior Departmental Representative had no objection to the condonation of delay.

8. I have duly considered the issue of condonation of delay and looking into the facts and circumstances of the case and specially noting that the bona fide of the assessee in this regard is beyond doubt, I condone the delay of 133 days and admit the appeal for the purpose of regular hearing.

9. Since the order passed by the NFAC was an ex-parte order, the Id. Senior D.R. had no objection to the restoration of appeal to the NFAC.

10. I have heard Senior Departmental Representative and have also perused the material on record. It is evident that there was complete non compliance on the part of the assessee during the course of first appellate proceedings but the same stands explained and, therefore, looking into the facts of this case, I am

of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the Id. NFAC with the direction to provide one more opportunity to the assessee to present his case and I also caution the assessee to fully comply with the directions of the Id. NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

11. In the result, appeal filed by the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 29/04/2024)

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Aks –  
Dtd. 29 /04/2024

*Copy of order forwarded to:*

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|--------------------------|--|
| (1) <i>The appellant</i> | (2) <i>The respondent</i>              |
| (3) <i>Commissioner</i>  | (4) <i>Departmental Representative</i> |
| (5) <i>Guard File</i>    |  |

Assistant Registrar