

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.286/Kol/2024
Assessment Years: 2016-17

M/s ABNM Restaurant Pvt. Ltd.....Appellant
C/o M/s Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor,
Kolkata – 700072.
[PAN:AAECA2448M]

vs.

ITO, NFAC, Delhi..... Respondent

Appearances by:

Shri Siddharth Jhajharia, FCA, appeared on behalf of the assessee.

Shri Sailen Samadder, Addl. CIT-DR, appeared on behalf of the Revenue.

Date of concluding the hearing : June 06, 2024

Date of pronouncing the order : June 13, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.12.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the ld. counsel for the assessee has invited our attention to the impugned order of the ld. CIT(A) to submit that the same was an ex parte order passed by the ld. CIT(A). Further, that the first appeal of the assessee has been dismissed by the CIT(A) being barred by limitation by 60 days. The ld. counsel has submitted that the non-compliance before the ld. CIT(A) was not intentional. The representative of the assessee namely Shri Samdarshi, Chartered Accountant, could not appear before the CIT(A) due to his personal compulsions and therefore, the matter before the CIT(A) remained unattended. Even, he could not explain the delay of 60 days in filing of

the appeal before the CIT(A), therefore, the ld. CIT(A) dismissed the appeal being barred by limitation. Two separate affidavits have been filed of Shri Manash Borthakur, director of the assessee company. In the first affidavit dated 05.06.2024, the reasons for non-compliance before the CIT(A) have been given in paras 4 & 5 of the said affidavit. The contents of which are reproduced as under:

“4. The reasons for non-compliance to notices referred to in a) to c) above are as follows-

a) That the Chartered Accountant, Mr. Samdarshi, who looks after the taxation work of the Company was pre-occupied with the poor / ill-health of his mother who is around 75 years old and have been suffering from various old-age related illness and was not attending the office or checking the emails of the Company or never informed the Company about receipt of such notices;

b) The Company came to know about issuance of such notices only after receipt of such order from the Income Tax Department and the present Appeal was filed.

5. That, since the notices issued by the Learned CIT (A) NFAC, Delhi were not attended due to reasons beyond the control of the Company and since the appellant never had any malafide intention of not complying to such notices, as will be evident from the assessment framed under section 147, it is prayed before the Hon'ble Income Tax Appellate Tribunal that such non-compliance to the notices may kindly be condoned.

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and "sufficient cause" for condoning the non-compliance of such notices issued by the

Learned CIT(A) NFAC, Delhi.. The facts and circumstances elucidated in the accompanying application involves the question of "substantial justice", whereon-compliance to the notices issued by the Learned CIT(A), NFAC, Delhi , deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay is being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the appellant.

2.1 In the second affidavit, almost identical reasoning has been given in para 4 & 5 of the said affidavit, contents of which are reproduced as under:

“4. The reasons for delay in filing of the Appeal before the Learned CIT(A) NFAC, Delhi, is for the reasons mentioned below-

a) That the order passed by the AO under section 147 of the Act, dated 31 st March, 2022, had passed an order on 18.11.2022 which came to the knowledge of the Company only on the last week of May, 2022 as the Chartered Accountant who looks after the taxation and accounting working of the Company and also checks the relevant mails from various statutory bodies, including the Income Tax Department was sick, from middle of March, 2022 till the last week of May, 2022.

b) That immediately on coming to the knowledge of the Company, in the last week of May, 2022 the matter was taken up with the Tax Consultants, the Appeal was prepared, the taxes were paid and the Appeal was filed on 29 June, 2022, electronically.

5. That, since the order of the AO is dated 3 1.3.2022, the date of service of the order has been considered also on the same day and thus the delay of 60 days have been counted.

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for condoning the delay in filing of the Appeal before the Learned CIT(A) NFAC, Delhi.. The facts and circumstances elucidated in the accompanying application involves the question of "substantial justice", where gross delay of 60 days, deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay is being denied it would seriously undermine the cause of the justice, resulting into miscarriage of justice for the appellant.”

2.2 The ld. counsel has submitted that the assessee has a fair case on merits. That he may be given an opportunity to present its case before the ld. CIT(A).

3. The ld. DR, however, has relied upon the order of the CIT(A).

4. Considering the aforesaid submissions of the ld. representatives of the parties, the impugned order of the CIT(A) is set aside, the short delay of 60 days in filing the appeal before the ld. CIT(A) is hereby condoned. The matter is restored to the file of the CIT(A) with a direction to decide the appeal of the assessee, afresh, on merits. Needless to say that the CIT(A) will give proper opportunity to the

assessee to present its case and the assessee will duly comply with the notices issued by the CIT(A).

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

Kolkata, the 13th June, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 13.06.2024.

RS

Copy of the order forwarded to:

1. M/s ABNM Restaurant Pvt. Ltd
2. ITO, NFAC, Delhi
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches