

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1355/Mum./2024
(Assessment Year : 2017-18)

Vikalp Goutam Pawar,
Flat No. 004, Building 24, Citizen CHS
Ltd., Opp. Link Road, Ekta Nagar,
Kandivali West,
Mumbai-400067.
PAN No. : ANFPP 5615 G

..... Appellant

v/s

Income Tax Officer-33(1)(7),
Room No. 918, 9th floor,
Kautilya Bhavan, C-41 to C-43,
G Block BKC (E), Mumbai-400051.

..... Respondent

Assessee by : Shri Dharmesh Shah
Revenue by : Shri Surendra Meena, Sr. DR

Date of Hearing – 11/06/2024

Date of Order – 18/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 13/12/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2017-18.

2. The present appeal is time barred by 40 days. Along with the appeal, the assessee has filed an application seeking condonation of delay which is duly supported by the affidavit of the assessee. In the aforesaid application, the assessee submitted that he did not receive the impugned order passed by the learned CIT(A) on 13/12/2023 for the reason that the order was sent on the old email address of the assessee being "vpawar25@gmail.com", however, the assessee has changed his email address since the month of May 2023. It is further submitted that due to the above reasons, the assessee also did not receive the notice of hearing issued by the learned CIT(A) on 06/12/2023. The assessee submitted that subsequent to Covid 19 pandemic, his business has stopped and the earlier Chartered Accountant is not working with him since October 2023. The assessee submitted that on 15/03/2024, when the new consultant logged in the Income Tax Portal of the assessee to check the pending proceedings, they found that order under section 250 of the Act has been passed by the learned CIT(A) on 13/12/2023. Thereafter, necessary steps were taken for filing the present appeal before the Tribunal. The assessee submitted that the delay of 40 days in filing the present appeal is on account of the circumstances beyond his control and there is no malafide intention in filing the present appeal belatedly. Accordingly, the assessee prayed for condonation of delay in filing the present appeal.

3. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble

Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit by the late filing of the appeal. In view of the above and having perused the affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee and we proceed to decide the appeal on merits.

4. In this appeal, the assessee has raised the following grounds:-

1. *The Ld. CIT(A) has erred in law and in facts in passing the order u/s. 250 of the Act dated 13.12.2023 dismissing the appeal of the appellant and confirming the assessment order u/s 144 of the Act which is bad and invalid in the eyes of law.*
2. *The Ld. CIT(A) has erred in law and in facts in passing the order in gross violation of principles of natural justice while dismissing the appeal of the appellant.*
3. *The Ld. CIT(A) has erred in law and in facts in upholding the assessment order passed by AO which was passed without granting sufficient opportunity of being heard.*
4. *The Ld. CIT(A) has erred in law and in facts in upholding the assessment order passed by AO on best judgment basis u/s 144 of the Act which is bad and invalid in the eyes of law.*
5. *The Ld. CIT(A) has erred in law and in facts in upholding the assessment order passed by AO without appreciating that the assessment order is passed without mandatory Document Identification Number (DIN) and therefore invalid and bad in the eyes of law.*
6. *The Ld. CIT(A) has erred in law and in facts in upholding the assessment order passed by AO without appreciating that the assessment order is*

passed without issuing statutory notice u/s 143(2) of the Act and therefore the consequent assessment order is invalid and bad in the eyes of law.

7. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in invoking provisions of s. u/s 69A of the Act for making addition of Rs. 8,35,53,345/- by estimating income at 15% of the credits in the bank account of Rs. 56,20,91,566/-.*
8. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in invoking provisions of s. 69A of the Act and taxing the income as per s. 115BBE of the Act which is bad and invalid in the eyes of law.*
9. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in charging interest u/s 234A, 234B and 234C of the Act.*
10. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in initiating penalty proceedings u/s 271AAC of the Act.*
11. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in initiating penalty proceedings u/s 272(1)(d) of the Act.*
12. *The Ld. CIT(A) has erred in law and in facts in confirming the action of AO in initiating penalty proceedings u/s 271F of the Act.*

5. We have considered the submissions of both sides and perused the material available on record. In the present case, at the outset, it is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. Now in appeal before us, the assessee is duly represented by the learned Authorised Representative ("learned AR") and wishes to pursue the litigation against the addition made by the AO. In the affidavit filed by the assessee in support of its application seeking condonation of delay, it has been submitted that the assessee neither received the last e-mail communication or notice of hearing dated 06/12/2023 from the learned CIT(A) nor the impugned order, as he changed his email address in the month of May 2023. Therefore, in view of the above, we are of the considered opinion that in the interest of justice,

the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable and adequate opportunity of hearing to the parties. Further, the assessee is directed to furnish/update his email address in the records before the learned CIT(A) so that the hearing notice(s) are sent on the operational email address. Thus, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

6. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18/06/2024

SD/-
B R BASKARAN
ACCOUNTANT MEMBER

SD/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 18/06/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT, Mumbai City concerned;
- (4) The DR, ITAT, Mumbai;
- (5) Guard file.

Rahul Sharma
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai