

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No.931/Bang/2023
Assessment Year: 2017-18**

Smt. Sethi Seema, No.112, II Stage, West of Chord Road, Rajajinagar, Bangalore- 560086 PAN: AOIPS7589C (Appellant)	Vs.	Income Tax Officer, Ward 6(2)(2), BMTc Building, 80 Feet Road, Koramangala, Bangalore – 560 095 (Respondent)
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Present for:

Assessee by : Sri. Mahesh Kumar L, A.R.
Revenue by : Sri. Ganesh R. Ghale, D.R.

Date of Hearing : 30. 05. 2024
Date of Pronouncement : 30. 05. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 24.08.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. At the outset, we observe that there is a delay of about 30 days in filing the instant appeal on which the assessee by filing an application for condonation of delay along with the affidavit of the assessee has submitted that in the instant case the impugned order dated 24.08.2023 in fact was received by the assessee on 24.08.2023 against which the time limit for filing the first appeal

before the Hon'ble ITAT though prescribed is 60 days which falls on 22.10.2023 and though the assessee has filed the appeal fee on 16.10.2023 and signed the appeal memo on the very same day and instructed the office staff of the assessee to handover the appeal memo to the present counsel for filing before the Hon'ble ITAT, however, during Ayuda Pooja the present appeal file was inadvertently placed in regular files of the office without noticing the fact that the appeal memo was not filed before the Hon'ble ITAT, however, immediately after noticing the said fact, the appeal was filed on 22.11.2023 which resulted into delay of approx. 30 days. The assessee was under a genuine mistake of common error and the delay occurred in fact is neither deliberate but on bonafide mistake due to pure lapse of mind and error without any malicious intent to delay the proceedings and therefore by taking a compassionate view the delay may be condoned.

3. Though the Ld. D.R. objected the contention of delay, however, not refuted the factual aspects as demonstrated by the assessee, hence considering the contention/claim raised by the assessee specifically in the absence of any material contrary, as genuine and bonafide the delay in filing the instant appeal is condoned. Coming to the merits of the case, we observe that in the instant case the Assessing Officer (AO) vide assessment order dated 20.12.2019 under section 143(3) of the Act made the addition of Rs.10,47,250/- under section 69 of the Act on account of unexplained cash deposit during the demonetisation period. The assessee, being aggrieved, challenged the said addition before the Ld. Commissioner who though afforded various opportunities by sending notices to the assessee, however, the assessee made no compliance and preferred not to file any written submissions or evidences in support of its case and therefore in the absence of specific reply/documents and in the constrained circumstances affirmed the aforesaid addition by

dismissing the appeal of the assessee. The assessee, being aggrieved, has preferred the instant appeal.

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case. The assessee, before us, has filed paper book containing various documents vis-à-vis bank statement, rental agreement, ITR V-statement of affairs and balance sheet, Aadhar card, cash withdrawal from bank of Firm and hospital-admission proofs, cash transaction 2016-declaration, ITR-V filed for A.Y. 2017-18 and computation, details submitted before the AO on 13.08.2018, partnership deed-carrot health and beauty concepts, fashion matrix clothing, fashion matrix overseas, colour matrix and ITR of above four firms for A.Y. 2017-18, A.Y. 2016-17 and A.Y. 2015-16. The assessee further claimed that though the assessee has filed relevant documents before the authorities below, however, they failed to consider the same and in fact indirectly denied the opportunity and violated the principle of natural justice.

5. On the contrary the Ld. D.R. refuted the claim of the assessee.

6. We have considered the rival submissions of the parties. At this juncture, we are inclined not to go into the controversy as to whether the assessee has filed the relevant documents before the authorities below, however, it is a fact that the Ld. Commissioner in the absence of relevant reply/documents has also failed to decide the issue under consideration in its right perspective and proper manner. Hence, for just decision of the case and for substantial justice, we are inclined to afford one more opportunity to the assessee to substantiate its case before the Ld. Commissioner. Consequently, the impugned order is set aside and the case is remanded to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity to the assessee to substantiate his claim before the Ld. Commissioner.

7. We also direct the assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential and required by the Ld. Commissioner for proper adjudication of the case. We clarify that in case of further default the assessee shall not be entitled for any leniency.

8. Thus Hence, the case is remanded accordingly.

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

Order is pronounced on 30-05-2024 as per Rule 34 of the Income Tax (Appellate Tribunal) Rules 1963

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Bengaluru
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Bengaluru.