

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 3887/Mum/2023 (A.Y.2013-14)**

Shri Aditya Shashikant Kale

Flat no. 2202, 22nd Floor,
Eagleton Building, Hiranandani
Park, Near Mercedes Showroom,
Thane West-400 607
PAN: BFVPK4417C

..... Appellant

Vs.

Jurisdiction Ward 22(1) (6)

Piramal chamber, Mumbai
AO Type W, AO Number 6,
Range Code 197,
Mumbai- 400 012

..... Respondent

Appellant by : Shri Anil Sathe, Ld. AR
Respondent by : Shri Manoj Kumar Sinha, Ld. DR
Date of hearing : 02/05/2024
Date of pronouncement : 07/06/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 04.09.2023 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2013-14. The assessee has raised the following grounds of appeal:-

- 1. The learned Commissioner of income tax (Appeals) erred in dismissing the appeal on the grounds of delay without appreciating that the assessment order was received by the appellant only on 26th September 2022 and he filed the appeal on 27th September 2022 and therefore the appeal was within time.*
- 2. In the alternative and without prejudice to the above the learned CIT (Appeals) erred in not communicating to the appellant that in his view the appeal was a delayed appeal and therefore the appellant needed to explain the delay in filing the appeal.*
- 3. The learned CIT(Appeals) erred in not appreciating that, the addition of Rs. 2,24,87,000/-, to the income of the appellant under section 69 was bad in law as there was no evidence of the appellant and having made this investment.*
- 4. The learned CIT(Appeals), erred in not appreciating that in the assessment order there is no mention whatsoever of the evidence/documents on record of the assessing officer establishing that the appellant herein had made an investment of Rs.2,24,87,000/-.*
- 5. The learned CIT (Appeals) erred in not providing proper opportunity basis the principle of natural justice.*
- 6. The appellant previously to add alter or amend any of the grounds of appeal prior to or at the time of hearing.*

2. The brief facts of the case are that assessee is a non-filer u/s. 139 of the Act. Thereafter on going through the ITS website, it was noticed by the revenue that assessee had purchased a property worth Rs. 2, 24, 87,000/- during the year under consideration. Based on this information, case of the assessee was taken up for reopening and a notice u/s. 148 was issued to the assessee on 24.03.2021. In response to this notice, the assessee neither filed any return of income nor asked for supply of reasons for reopening. Further notices were issued u/s. 142(1) of the Act on 24.07.2021, 28.08.2021 and 23.11.2021. Ultimately, an ex-parte order u/s. 144 r.w.s. 147 and 144B of the Act was passed treating the amount

mentioned (supra) as unexplained u/s. 69 of the Act. The assessee being aggrieved with the order of AO preferred an appeal before the Ld. CIT (A) who in turn dismissed the appeal of the assessee on the ground that there was a delay in filing of appeal before him and assessee was not able to adduce any evidence/ explanation which justify the delay. The assessee felt aggrieved with this order passed by the Ld. CIT (A) preferred the present appeal before us.

3. We have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith the grounds raised before us. It is observed that as per the submissions before the Ld. CIT (A) assessee was a student and was not earning any income under any head chargeable to tax. As per the assessee, there was no any bank account in his name. The date of assessment order was 25.03.2022 and the appeal before the Ld. CIT (A) was filed on 27.09.2022. So apparently, there was a delay of almost 5 months. Although in Form no. 35, assessee claimed that date of service of demand notice issued u/s. 156 of the Act was received on 26.09.2022 and in turn appeal was filed on 27.09.2022, hence there is no delay on the part of the assessee.

4. In addition to the factual matrix narrated (supra), we have considered the submissions of the assessee before the Ld. CIT (A) wherein he tried to explain the whole matter and if he is able to substantiate the submissions with evidence there can be a case for the assessee, but as there is no effective hearing took place before the First Appellate Authority, we deem it fit to restore the matter back to the file of the Ld. CIT (A) for afresh hearing after giving a reasonable opportunity of being heard to the assessee and assessee is directed to substantiate his claim about receiving demand notice issued u/s. 156 of the Act

on 26.09.2022 or file an application for condonation of delay. The assessee is further directed to adduce relevant evidences before the Ld. CIT (A) to substantiate his claim about the transaction under consideration without fail and any adjournment. In the result, grounds raised by the assessee are allowed.

5. Based on above, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 7th day of June, 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 07/06/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai