

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA Nos. 83, 85 & 88/MUM/2024  
Assessment Year: 2017-18**

Shreeya Shirish Joshi,  
1/12 Acharya Building Bal Govind  
Das Road, Mahim  
Mumbai-400016.

**PAN NO. AEVPJ 8201 K**  
**Appellant**

ITO,  
Piramal Chamber  
Mumbai.

**Vs.**

**Respondent**

Assessee by : Mr. A P Sinha  
Revenue by : Ms. Usha Gaikwad, Sr. DR

Date of Hearing : 20/06/2024  
Date of pronouncement : 21/06/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

These three appeals by the assessee are directed against separate orders of the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, *inter alia*, relating to penalty for non-compliance of the notices and penalty in relation to the addition u/s 115BBE of the Income-tax Act, 1961 (in short ‘the Act’) respectively.



2. The appeals having ITA No. 83 and 85 have been filed with a delay of more than 82 days. Before us, the Ld. counsel for the assessee submitted an affidavit by the assessee wherein he has submitted that his mother-in-law met with an accident and suffered grievous injuries and the assessee herself suffered from serious ailments, thus, these appeals could not be filed on time. Relevant part of her affidavit is reproduced as under:

*“2-The deponent begs to inform that her mother in law aged about 84 years met with an accident and suffered grievous injuries and was also admitted in a hospital.*

*3-The deponent herself suffered from a serious ailment and consulted a Doctor on 5.9.2023 who advised her to take complete bed rest till 16.12.2023 [medical certificate enclosed].*

*4-The deponent further begs to inform that she again consulted the Doctor on 17.12.2023 as there was only slight improvement in her condition who again advised her bed rest till 10.1.2024.*

*5-The deponent consulted her counsel on 4.1.2024 when she was feeling better for filing her appeal.*

*6-The deponent's counsel filed the appeal on 5.1.2024, as such it is delayed by 82 days.*

*7-The deponent prays and requests to condone the delay in filing the appeal as it is because of the reasonable cause.”*

3. We have heard rival submission of the parties on the issue of condonation of the delay in filing the appeals. In our opinion, there is a sufficient and justified cause on the part of the assessee for delay in filing the appeals and therefore, in view of the interest of substantial justice, we condone the delay and admit both these appeals for adjudication.



4. In ITA No. 83/M/2024, the assessee is aggrieved against the penalty of Rs.50,000/- levied by the Assessing Officer u/s 272A(1)(d) of the Act for five defaults of compliance of notice u/s 142(1) of the Act. This penalty has been upheld by the Ld. CIT(A) observing as under:

*“3. I have gone through the impugned order of the AO, assessment order, 'Statement of Facts', 'Grounds of Appeal' and submission of the appellant. The appeal in the present case has been filed late by 56 days and the appellant has requested for condonation of delay in filing of appeal. In this case, the appellant failed to make compliance to notice, issued u/s 142(1) of the Act and, therefore, the AO initiated penalty proceedings u/s 272(1)(d) of the Act. The appellant failed to make compliance to six notices, issued u/s 142(1) of the Act as also with respect to the penalty proceedings and to avail the opportunity, provided by the AO to explain her case. She failed to even submit reply to the notices, issued during the course of appellate proceedings. This shows casual approach on her part. It is noticed from the assessment order and the impugned order that notice u/s 148 of the Act was issued for the first time on 24.03.2021 and impugned order was passed on 21.09.2022 but she did not make compliance to any of the notices, issued during the course of both the proceedings. So the explanation of the appellant that delay in filing of appeal, failure to file return of income and making compliance to the show-cause penalty notices was on account of damage to chamber of her counsel, does not appear to be convincing and, is, therefore, not acceptable. Furthermore, it is the responsibility of the appellant and not her counsel to ensure compliance to the legal requirements. There is a series of default on part of the appellant in making statutory compliance, as envisaged by the Income Tax Act. Considering all this, delay in filing of appeal is not condoned and the appeal is dismissed.”*

5. We have heard rival submission of the parties and perused the relevant material on record. We find that the Assessing Officer has levied penalty in respect of following non-compliance of the notices as reproduced on table on page 3 of the Assessment order:

Sr. No.	Notice issued u/s	Date of issue of notice	Date of Compliance	Notice Served at email	Status of compliance
1.	Notice u/s 142(1)	24.11.2021	09.12.2021	aptech@yahoo.co.in	Not comply
2.	Notice u/s 142(1)	17.12.2021	27.12.2021	aptech@yahoo.co.in	Not comply
3.	Notice u/s 142(1)	11.01.2022	18.01.2022	aptech@yahoo.co.in Shirish1912@gmail.com	Not comply



4.	Notice u/s 142(1)	04.02.2022	10.02.2022	aptech@yahoo.co.in Shirish1912@gmail.com	Not comply
5.	Notice u/s 142(1)	18.02.2022	25.02.2022	aptech@yahoo.co.in Shirish1912@gmail.com	Not comply

5.1 Before the Ld. CIT(A) it was submitted on behalf of the assessee that due to on account of damage to the chamber of her counsel, the counsel could not comply to the notice u/s 142(1) of the Act and therefore, the ex-parte order u/s 144 of the Act was passed by the Assessing Officer. According to the Ld. counsel for the assessee, there is no willful intention of avoidance of notices on the part of the assessee and therefore, no penalty should be levied. In our opinion, there is a justified reason on the part of the assessee for not complying notices. We are of view that the assessee should not be penalized for any default on the part of the authorized representative. In the circumstances, we feel it appropriate to set aside the order of the Ld. CIT(A) and cancel the penalty levied by the Assessing Officer. The appeal of the assessee is accordingly allowed.

6. In ITA No. 85/Mum/2024, the assessee is aggrieved with the penalty of Rs.10,54,462/- levied u/s 271AAA of the Act. The said penalty levied has been upheld by the Ld. CIT(A) observing as under:

**“3. Decision-**

*I have gone through the impugned order of the AO, assessment order, 'Statement of Facts', 'Grounds of Appeal' and submission of the appellant. The appeal in the present case has been filed late by 56 days and the appellant has requested for condonation of delay in filing of appeal. The appellant failed to make compliance to notices, issued u/s 142(1) of the Act, with respect to the impugned penalty proceedings and to avail the opportunity, provided by the AO to explain her case. She failed to even*



*submit reply to the notices, issued during the course of appellate proceedings. This shows casual approach on her part. It is noticed from the assessment order and the impugned order that notice u/s 148 of the Act was issued for the first time on 24.03.2021 and impugned order was passed on 21.09.2022 but she did not make compliance to any of the notices, issued during the course of both the proceedings. So the explanation of the appellant that delay in filing of appeal, failure to file return of income and making compliance to the show-cause penalty notice was on account of damage to chamber of her counsel, does not appear to be convincing and, is, therefore, not acceptable. Furthermore, it is the responsibility of the appellant and not her counsel to ensure compliance to the legal requirements. There is a series of default on part of the appellant in making statutory compliance, as envisaged by the Income Tax Act. Considering all this, delay in filing of appeal is not condoned and the appeal is dismissed.”*

6.1 Before us, the Ld. counsel for the assessee submitted that if the matter is restored back to Ld CIT(A), then the assessee is willing to appear and explain the additions/levy of the penalty on merit ,therefore, the matter may be restored back to the file of the Ld. CIT(A).

6.2 We have heard rival submission of the parties and perused the relevant material on record. Since, the assessee failed to make compliance of notice issued by the Ld. CIT(A) due to default on the part of the Ld. Authorized Representative. In the interest of substantial justice, we feel it appropriate to restore the matter back to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.

7. Regarding the appeal in ITA No. 88/Mum/2024, we find that this appeal has not been verified properly. The Ld. counsel for the assessee submitted that this appeal is duplicate in respect of order



of the Ld. CIT(A) dated 16.08.2023 which has already been considered while disposing the ITA No. 83/Mum/2024. This appeal being duplicate, the Ld. Counsel for the assessee sought to withdraw the appeal. Accordingly, this appeal is dismissed as withdrawn.

8. In the result, the appeal in ITA No. 83/Mum/2024 is allowed ,appeal of the assessee in ITA No. 85/Mum/2024 is allowed for statistical purposes and appeal in ITA No. 88/Mum/2024 is dismissed.

**Order pronounced in the open Court on 21/06/2024.**

**Sd/-  
(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 21/06/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**