



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.135/LKW/2024
Assessment Year: 2018-19

Sanjay Kumar 230, Khairi Garh Nighasan Kheri	v.	The ITO (NFAC) Assessment Unit New Delhi
PAN:FSMPK7383H		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjay Kumar (Assessee)		
Respondent by:	Shri Manu Chaurasia, CIT(DR)		
Date of hearing:	26	06	2024
Date of pronouncement:	26	06	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 18.01.2024 for the assessment year 2018-19, raising the following grounds:-

1. On perusal of the Order u/s 250 of the Income Tax Act, 1961 passed by the Ld. CIT(A), National Faceless Appeal Centre (NFAC) in Appeal No. NFAC/2017-18/10266784 vide Order No. ITBA/NFAC/S/250/2023-24/1059886118(1) dated 18.01.2024 and in view of the facts and circumstances of the case, I am of the opinion that the Ld. CIT(A) has erred in:

(1) The delay of 107 days was not condoned by Ld. CIT(A) even after having valid concrete grounds based on genuine hardship of the assessee which have been produced before the competent authority.

(2) As the facts of the case are still unheard to the appellate authority and the department has imposed huge demand of Rs.5,22,63,242/- on a very poor person which is not sustainable by the assessee and against the principles of natural justice.

2. The brief facts of the case are that the assessee is an individual and not filed the return of income for the year under consideration. On the basis of the cash deposits and withdrawals from the bank account of the assessee, the Assessing Officer issued notices to the assessee under the relevant sections of the Income Tax Act, 1961, requiring the assessee to furnish certain details, information/documents, etc. Since there was no response on the part of the assessee, the Assessing Officer completed assessment under section 144 read with 147 and 144B of the Act, assessing the total income of the assessee at Rs.3,16,08,291/-, against which the assessee preferred an appeal before the Id. CIT(A), NFAC. The appeal before the Id. CIT(A), NFAC, as per the Id. CIT(A), NFAC ought to have been filed by the assessee latest by 22.04.2023, i.e., within 30 days of having been served with the demand notice, whereas the assessee had filed the appeal only on 07.08.2023 with a delay of 107 days. The assessee had filed an application for condonation of delay, supported by medical certificates, stating therein that "There is a delay of 102 days in filing of appeal. The delay was due to ill health of the assessee. Due to severe health issues, the assessee could not file appeal within time. The delay in filing appeal is not with malafide intention and not intentional. The assessee has sufficient reasons for being late in filing of appeal. In the interest of justice and considering the facts and circumstances of the case, the delay in filing of appeal may kindly

be condoned and accept the appeal of the assessee on the basis of the principles of natural justice and the merits of the case. If any other details or documents is desired by your honor in the process of finalization of the appeal, the same would be provided during the course of the appeal proceedings". However, the Id. CIT(A) dismissed the appeal of the assessee, being not admitted.

3. We have heard both the parties and perused the material on record. We find that the assessee had filed an application for condonation of delay supported by medical certificates, as per which, the assessee was suffering from Muscular Dystrophy and undergoing with Muscular Dystrophy Treatment since August, 2022 in Sanjay Gandhi Postgraduate Institute of Medical Sciences and Nelson Hospital. The Id. CIT(A), instead of considering the plea of the assessee in the application for condonation of delay and also the medical certificates, has dismissed the appeal of the assessee, simply, observing that there exists no sufficient or good reason for condoning inordinate delay of more than 107 days in filing the appeal. In our view, there was a valid reason for not filing the appeal before the Id. CIT(A), on time, as the assessee was suffering from Muscular Dystrophy and was mentally very disturbed. Otherwise too, it being the assessee's appeal, the assessee cannot be said to have gained anything by knowingly and willfully delaying the institution thereof. Nothing to the contrary has been observed by the Id. CIT(A). Therefore, the Id. CIT(A) ought to have condoned the delay in the filing of the appeal and decided the appeal on merit. We, accordingly, condone the delay in filing of the appeal and direct the Id. CIT(A) to admit the appeal and decide the issue on merit after affording due opportunity of hearing to the assessee.

4. In view of the above, the matter is remitted to the file of the Id. CIT(A), to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee.

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

Order pronounced in the open Court on 26/06/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED:26/06/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar