

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE DR KRINWANT SAHAY, ACCOUNTANT MEMBER
& SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 698/CHD/2023

निर्धारण वर्ष / Assessment Year: 2014-15

Narmail Singh, Yamunanagar	Vs. बनाम	The ITO, Ward-5, Yamunanagar
स्थायी लेखा सं./PAN No: DYHPS5817P		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

निर्धारिती की ओर से/Assessee by : Shri Tejmohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 03.07.2024

उद्घोषणा की तारीख/Date of Pronouncement : 04.07.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

Appeal in this case has been filed by the Assessee against the order dated 23.10.2023 of the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFACT), Delhi.

2. Grounds of appeal are as under: -

1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law in dismissing the appeal only on the ground that the appellant has failed to provide any sufficient cause for the delay*

in filing of appeal by 14 days without issuance of any show cause notice to explain the delay which is arbitrary and unjustified.

2. *That the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that while filing the appeal in Form Number 35, it was specifically mentioned that the counsel of the assessee was down with viral fever and a prayer was made to condone the delay which has not been considered in the correct perspective and as such the order passed arbitrary and unjustified.*
3. *Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in not deciding the appeal on merits leading to upholding of the penalty of Rs.30,000/- imposed under section 271 (l)(b) of the Act which is arbitrary and unjustified.*
4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
5. *That the order of Ld. Commissioner of Income Tax(Appeals) Officer is arbitrary, opposed to the facts of the case and thus untenable*

3. The brief facts of the case are as under:-

“1. As per information captured by the departmental insight portal, the Assessee had received Interest of Rs. 32,50,155 /- during the financial year 2013-14 relevant to the assessment year 2014-15, on which due TDS had been deducted by the Interest paying party i. e. Land Acquisition Office, u/s 194A. Consequent upon receipt

of the above detailed information, system generated enquiry letter/ NMS letter was issued to the assessee on 15.03.2021 wherein he was requested to furnish response on the compliance portal. On perusal of the details of the case through AIMS Module of the ITBA it was revealed that the assessee had not filed any response. It was further verified from the ITBA as well as AST that the Assessee has not filed his ITR for the A.Y. 2014-15.

2. Further, it is pertinent to mention here that the assessee had received interest on enhanced compensation amounting to Rs. 32,50,155/- and has not filed his ITR. In view of provisions of section 56(2) of the Income Tax Act, 1961, the interest income on enhanced compensation was taxable after deduction @ 50% from the such receipts/interest income u/s 57(iv) of the Income tax Act, 1961, which would amount to Rs. 16,25,078/- (50% of 32,50,155/-). As the interest income of Rs. 16,25,078/- earned by the assessee during the period under assessment had escaped assessment, proceeding u/s 147 of the Income Tax Act, 1961 were initiated against the assessee after obtaining the prior approval from the competent authority, on the basis of the above reasons duly recorded. Therefore, notice u/s 148 of the Income Tax Act, 1961 was issued and was served upon the assessee on 30/03/2021 on the email as provided by the assessee as well as on e-filing portal. An SMS was also sent on the registered mobile no. of the assessee regarding issuance of notice. In response to this notice, no response was filed by the assessee.”

4. During proceedings before us, the ld. Counsel of the Assessee at the outset submitted that it is an ex-parte order passed by the ld.

CIT(A). The ld. Counsel of the Assessee submitted that the ld. CIT(A) dismissed this appeal giving findings as under:-

“3.11 Considering all the facts on record it is apparent that the appellant has failed to file appeal within the stipulated time limit prescribed under the Act. There is a delay of 14 days and the explanation advanced in Form No. 35 by the appellant do not show any cogent and sufficient reasons to enable condonation of the delay. The contentions made by it are not borne out from facts or evidence. Under the given facts and circumstances, keeping in view the judicial rulings in the matter, the appeal, being delayed, is devoid of any merit to warrant its admission. Therefore, the appeal is treated as dismissed as not admitted.”

5. The ld. Counsel further stated that while filing of the appeal before the ld. CIT(A) it was clearly mentioned in para 15 of Form No.35 that there was delay of 12 days and the delay was because the Counsel of the Assessee was sick and he had viral infection and it was requested that the delay of 12 days may kindly be condoned. The ld. CIT(A) did not accede to the request for condonation of day of 12 days in filing the appeal and dismissed the appeal treating it as a belated filed appeal.

6. We have considered the findings of the ld. CIT(A) in his order and the submissions made by the Counsel of the Assessee during the proceeding before us. We find that despite the fact that in Column 15 of Form 35 it was clearly mentioned that the appeal was delayed by 12 days because the Counsel of the Assessee was suffering from viral infection. The ld. CIT(A) has neither taken cognizance of this fact nor he has issued any notice seeking clarification for delay in filing the appeal. He has simply dismissed the appeal as not admitted and accordingly has not passed the appeal order on merit though CIT(A)'s are required to pass the appeal order on merit on the basis of material available on record. He has simply dismissed it on the technical ground. Therefore, in order to meet the end of justice, the case is remanded back to ld. CIT(A) for adjudication afresh on merits, 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 CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

7. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced on 04.07.2024.

Sd/-
(PARESH M. JOSHI)
Judicial Member

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“rkk”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar