

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,
ITA No.1136/Mum/2024
(A.Y. 2014-15)**

Mrs. Laxmibai Suresh Singh Rajput, Room No. 3 Jai Bhavani HSG. Society, G.K. Gokhale Road, Mulund (East), Mumbai - 400081	Vs.	ITO 41(2)(1) Kautilya Bhavan, Bandra Mumbai - 110001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AJEPR7466C		
Appellant	..	Respondent

Appellant by :	Hari S. Raheja
Respondent by :	Raj Singh Meel

Date of Hearing	11.06.2024
Date of Pronouncement	04.07.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order of ld. CIT(A) NFAC of the Income Tax Act, 1961 for A.Y. 2014-15.

The assessee has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the learned CIT Appeals was not justified in dismissing the appeal of the appellant holding the same as not admitted on the ground that the appellant had failed to justify the delay on filing the appeal.*
- 2. The appellant submits that the assessment order dated 30th December 2016 was received by her on 6th January 2017 but the appeal could not be filed in time i.e. within days on account of unavoidable circumstances being the visit of the appellant to the native place and further on account her health grounds which reason was mentioned by the appellant at Para 15 of the appeal memo.*

3. *The appellant submits that the CIT Appeal has grossly erred in stating that the appellant has not provided any reason in form No. 35 totally disregarding the fact that the appellant had in fact explained the reason for delay at para 15 in form no. 35.*

4. *On the facts and in the circumstances in law the CIT Appeals was not justified in holding in para 6.3 of the order that the appeal of the appellant is not admitted on the ground that the appellant had not discharged the primary onus of the existence of delay in filing the appeal.*

The appellant prays that in form no. 35 the reason for the delay in filing the appeal was mentioned and in the event the CIT Appeals was not satisfied with the same, the appellant ought to have been granted a proper and reasonable opportunity to explain and justify the delay in filing the appeal.

WITHOUT PREJUDICE TO THE ABOVE.

5. *The appellant submits that the addition made by the Assessing Officer ought to be deleted on the ground that no material relied upon by the Assessing Officer has been furnished to the appellant, nor was the appellant been granted the opportunity to cross examine the person who was made the statement and the appellant denies of being the proprietor of Shree Mahalakshmi Milk Center or having purchased any milk in cash from Prabhat Dairy Limited as alleged by the Assessing Officer.*

6. *The appellant craves leave to add to, alter or vary the grounds of appeal at or before the hearing of the appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.2,28,490/- deriving income from house property and income from other sources was filed on 06.04.2015. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 26.02.2016 on the basis of information obtained from the search action u/s 132 of the Act conducted in the case of M/s Prabhat Dairy Limited that the assessee had made cash purchases of milk of Rs.163,89,710/- from the said dairy during the F.Y. 2013-14. Since no compliance was made before the assessing officer therefore the assessing officer has passed the order ex-parte u/s 144 r.w.s. 147 of the Act on 30.12.2016 and added the whole amount of alleged cash purchases of milk of Rs.163,89,710/- u/s 40A(3) of the Act to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee has not filed application for condonation of delay of 73 days in filing the appeal before the ld. CIT(A).

4. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above in this order the ld. CIT(A) has not adjudicated the appeal of the assessee on merit but dismissed the same on the ground that assessee has not established the existence of cause of delay in filing the appeal. Before us during the course of appellate proceedings the ld. Counsel referred column no. 15 of the form no. 35 filed before the ld. CIT(A) wherein at column no. 15 the assessee has categorically requested for condonation of delay by stating that order passed u/s 144 r.w.s 147 of the Act dated 30.12.2016 was received on 06.01.2017 but due to some family problem, visiting the native place and because of health problem the appeal could not be filed within 30 days of time limit therefore requested for condonation of the delay.

We consider that ld. CIT(A) has neither controvert the aforesaid fact specified in the Form No. 35 nor issued any further show cause notice to the assessee for specifying delay in filing the appeal, therefore, we consider that the decision of ld. CIT(A) in dismissing the appeal is not justified. The ld. Counsel has also filed paper book comprising copies of document filed before the lower authorities. Vide letter dated 14.03.2017 received in the office of ld. CIT(A) on 23.03.2017, the assessee explained that there was delay in filing the appeal due to some unavoidable circumstances and family turbulence. Vide letter dated 14.12.2017, the assessee has submitted before the ld. CIT(A) that the assessee has not made any cash transactions for purchasing of milk from M/s. Shree Mahalaxmi Milk Centre. However, these submissions

of the assessee has not been referred by the Id. CIT(A) in his order passed u/s 250 of the Act. Further the assessee has also filed application to provide copies of statement recorded and materials linking the assessee for making cash purchases of milk from of M/s Prabhat Milk Dairy Firm vide letter dated 01.11.2023 received in the office of the assessing officer on 02.11.2023. However, the assessing officer has not dealt with the application filed by the assessee.

5. In view of the above facts and circumstances we consider that Id. CIT(A) has not dealt with the submission regarding condonation of delay in filing the appeal already available on record in Form No. 35 and other detail mentioned in the communication made to the Id. CIT(A) as discussed above in this order.

6. Looking to the above facts and circumstances and material on record it appears there is a reasonable cause for delay in filing the appeal before the Id. CIT(A) by 73 days as discussed above in this order. In order to decide the issue on merit, considering the submission of the assessee as discussed (supra) in this order, we condone the delay in filing the appeal before the Id. CIT(A). Normally whenever any irregularity crept in the proceedings then after removing the irregularity proceeding is to be initiated from that stage but by remitting the issue to the Id. first appellate authority we would be multiplying the litigation, because the Id. CIT(A) would call for a remand report from the assessing officer and proceedings would commence on two stages, in order to avoid that situation we would be deem it proper to set aside the order to the file of the assessing officer for deciding on merit. It is needless to say that observation made by us will not injure or impair the case of the AO and will not cause any prejudice to the defence explanation of the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 04.07.2024

Sd/-

Sd/-

(Rahul Chaudhary)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 04.07.2024
Rohit: PS

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 अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.