

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.26/Nag./2021
(Assessment Year : 2006-07)

Shri Subhashchand Chandak (HUF)
Krishnakunj, 615, Maa Umiya Housing
Society, Chikhli Layout
Kalamna 440 035 PAN-AAIHS6865F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-1, Nagpur

..... Respondent

ITA no.33/Nag./2021
(Assessment Year : 2006-07)

Shri Subhashchand Chandak
Krishnakunj, 615, Maa Umiya Housing
Society, Chikhli Layout
Kalamna 440 035 PAN-AAIHS6865F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-1, Nagpur

..... Respondent

Assessee by : Shri K.M. Gupta
Revenue by : Shri Abhay Y. Marathe

Date of Hearing - 11/07/2024

Date of Order - 16/07/2024

ORDER

PER K.M. ROY, A.M.

The present appeals have been filed by the assessee challenging the impugned orders of even date 29/07/2015, passed by the learned

Commissioner of Income Tax (Appeals),-1, Nagpur, ["learned CIT(A)"], for the assessment year 2006-07.

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Assessee's Appeal – A.Y. 2006-07

2. Following grounds have been raised by the assessee: –

"1. That, the learned CIT (A) has erred in not deciding the Ground No. 5 raised in Grounds of appeal.

2. That, whether additions made on other grounds would sustained, when the primary ground on the basis of which reassessment u/s 147 is initiated, ceased to exist.

3. That, the Assessing Officer has erred, while giving effect to order of CIT (A), Nagpur, in not deducting the other additions made in the assessment order, when the addition made on primary ground, on the basis of which reassessment u/s 147 was initiated, ceased to exist.

4. That, if the primary ground based on which reassessment u/s 147 initiated, cease to exist as per appeal order, whether additions made on other grounds will be deleted suo-moto or whether same has to be argued separately before appellate forum for its deletion.

5. That, the addition of Rs.2,00,000/- on account of deposit in passbook treated as income of the assessee u/s 68 is against the facts of the case.

6. That, the order passed by the A.O. and upheld by the CIT (A) as regards to additions made on the grounds other than the primary ground on which case was reopened is against the facts of case and the law applicable thereto.

7. The A.O. has not followed guidelines prescribed by the Hon'ble Supreme Court and Bombay High Court in the cases reported in 259 ITR 19 and 296 ITR 96 respectively. The A.O. has immediately passed the order within a day from supply of objection instead of 4 week time as prescribed by the Hon'ble Courts in the 259 ITR 19. Hence, the entire order passed by the A.O. violates the principle of natural justice and is bad in law.

9. That, the assessee craves, leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the course of hearing."

3. At the very outset, we find that there is a substantial delay of 2006 days in filing the present appeal before the Tribunal. As per Form no.36, the order passed under section 250 by the learned CIT(A) was received by the

assessee on 20/08/2015, and the appeal has been filed before the ITAT, Nagpur Bench, Nagpur, only on 21/04/2021. The assessee has filed Affidavit, the contents of which are reproduced below:–

"AFFIDAVIT ON BEHALF OF APPELLANT / DEPONENT IN SUPPORT OF APPLICATION FOR CONDONATION OF DELAY OF 2006 DAYS IN FILING APPEAL

The Deponent named above does hereby take oath and state on solemn affirmation as under:

1. I say and submit that I am the permanent resident of India by birth and domicile.

2. I say and submit that my PAN No. is AAIHS6865F.

3. I say and submit that I filed the instant appeal against the order dated 20/08/2015 passed under section 250 of the Income Tax Act, 1961 by the Commissioner of Income Tax (Appeals), Nagpur.

4. I say and submit that the application for delay in filing present appeal and instant appeal are drafted by my counsel as per instructions given by me. I further say and submit that the factual submissions and aspect made in the application for condonation of delay in filing present appeal and instant appeal is true and correct to my personal knowledge and beliefs and legal submissions if any made by counsel is correct.

5. I say and submit that there is delay of 2006 days in filing the present appeal. I say and submit that in order to avoid the repetitions, I most humbly prayed to this Hon'ble Tribunal that may kindly be pleased treat and adopt the reasons, submissions and explanations of delay which is elaborately explained and made in the application for condonation of delay in filing appeal and therefore, the submissions made in the said application may kindly treat part and parcel of this affidavit.

6. I say and submit that delay in filing the appeal is bonafide, genuine and does not prejudice the other parties if the same is allowed by this Hon'ble Court in the interest of justice.

7. I say and submit that if the present application for condonation of delay in filing present appeal is not allowed or rejected then it will amounts to great prejudice and injustice upon the appellant / deponent and carried irreparable loss.

Hence this Affidavit.

*Nagpur
22/4/2021*

Sd/-
Deponent"

4. No reasonable or sufficient cause has been placed on record in support of the delay in filing the present appeal. The Affidavit is nebulous and cryptic and do not address the issue of delay in precise terms. When this fact was pointed out to the learned A.R., he stated that he was pursuing the rectification application filed under section 154 of the Act before the learned CIT(A) on the ground of non-consideration of ground no.5, raised in the grounds of appeal. He also stated that he was confident that he will get relief from the learned CIT(A), but when the application came to be dismissed, he then felt fit to file the appeal before the Tribunal, which resulted in delay. He referred to the provisions of section 14 of the Limitation Act, 1963, to press the point that when there were proceedings relating to the same matter is prosecuted in good faith and such time should be excluded while considering the limitation. We find that there was no bar to simultaneously prefer application for rectification as well as filing the appeal before the Tribunal. He had relied on various judgments which are as under:-

i) Vijay Vishin Meghani v/s DCIT, ITA no.493 of 2015, order dated 19/09/2017;

ii) Sanjay Shankarrao Jadhao v/s CIT, ITA no.198/Nag./2023, order dated 06/05/2024;

iii) M/s. Saravana Stock – Investments Pvt. Ltd. v/s DCIT, ITA no.1852 & 2298/Chhy./2018, etc., order dated 12/04/2023;

iv) Smt. Sreelatha Ramdas, v/s ACIT, ITA no.439/Coch./2018, order dated 09/03/2020;

v) M/s. Laxmi Srinivasa R And P Boiled Rice v/s The State of Andhra Pradesh, Civil Appeal no.-SLP(c) no.11225 of 2022 (SC); and

vi) St. Francis De Sales Church Trust v/s ACIT, ITA no.1996/Mum./2020, order dated 28/03/2022.

5. But all the other cases are not applicable because the appellant has not come before us with clean hands. The assessee was taking a chance and its action is not at all bonafide, hence, we refuse to condone the delay. Accordingly, the grounds of appeal raised by the assessee are dismissed. Since the assessee has failed to convince us about the sufficient cause for condonation, we do not consider it necessary to delve on other issues.

6. In the result, appeal filed by the assessee is dismissed.

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7. The assessee has raised following grounds:-

"1. That, the learned CIT (A) has erred in not deciding the Ground No. 5 raised in the Grounds of appeal.

2. That, whether additions made on other grounds sustained if the primary ground on the basis of which reassessment u/s 147 is initiated, cease to exist.

3. That, the Assessing Officer has erred, while giving effect to order of CIT (A), Nagpur, in not deducting the other additions made in the assessment order, when the addition made on primary ground, based on which reassessment u/s 147 initiated, cease to exist.

4. That, if the primary ground based on which reassessment u/s 147 initiated, cease to exist as per appeal order, whether additions made on other grounds will be deleted suo-moto or whether same has to be agitated before appellate forum for its deletion.

5. That, the addition of Rs. 4,28,096/- on account of deposit in passbook as income of the assessee u/s 68 is against the facts of the case.

6. That, the order passed by the A.O. and upheld by the CIT (A) as regards to additions made on the grounds other than the primary ground is against the facts of case and law applicable thereto.

7. The A.O. has not followed guidelines prescribed by the Hon'ble Supreme Court and Bombay High Court in the cases reported in 259 ITR 19 and 296 ITR 96 respectively. The A.O. has immediately passed the order within a day from supply of objection instead of 4 week time as prescribed by the Hon'ble Courts in the 259 ITR 19. Hence, the entire order passed by the A.O. violates the principle of natural justice and is bad in law.

8. *That, the assessee craves, leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the course of hearing."*

8. Since the grounds raised by the assessee are similar to the grounds raised by the assessee in the appeal being ITA no.26/Nag./2021, except variation in figures of addition, we have dismissed the grounds raised by the assessee for the reasons stated above, consistent with the view taken therein, the grounds raised by the assessee in the appeal are also dismissed.

9. In the result, appeal filed by the assessee is dismissed in limine.

10. To sum up, both the appeals filed by the assessee are dismissed in limine.

Order pronounced in the open Court on 16/07/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 16/07/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur