IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.650/Bang/2024
Assessment Years : 2017-18

Nanjappa Shiva Murthy, No.34, Ward No.16, Oolavadi Road, Gandhinagar, Chintamani, Chikkaballapur – 563 125. **PAN – DBMPS 9319 L**	Vs.	The Income Tax Officer, Ward - 1, Chikkaballapur.
APPELLANT		RESPONDENT

Assessee by	:	Shri L Raghavendra Rao, C.A
Revenue by	:	Ms. Matta Padma, Addl. CIT

Date of hearing	:	03.06.2024
Date of Pronouncement	:	16.07.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 16/02/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1061036557(1) for the assessment year 2017-18.

2. The assessee before us has raised as many as 11 grounds of appeal but the relevant ground which requires to be adjudicated by us at this juncture is ground No. 5 of the memo of appeal. In this ground, the grievance raised by the assessee is that the learned CIT-A erred in confirming the order of the AO without hearing the assessee on merit.

3. In the present case, the appeal was filed by the assessee before the learned CIT-A with the delay of 224 days. The reason for the delay in filing the appeal was justified by the assessee by stating that the physical copy of the assessment order was not received by him as the address mentioned therein was not correct. Likewise, it was also submitted that the assessee is not literate and therefore he was not able to access to the emails and the website of the income tax department. Accordingly, the assessee prayed to condone the delay of 224 days in filing the appeal. However, the ld. CIT-A was not satisfied with the explanation of the assessee. According to the ld. CIT-A, there was no cogent reason furnished by the assessee for the delay in filing the appeal and therefore the ld. CIT-A dismissed the appeal filed by the assessee.

4. Being aggrieved by the order of the ld. CIT-A, the assessee is in appeal before us.

5. The learned AR before us reiterated the contentions as made before the ld. CIT-A. The ld. AR further submitted that the learned CIT-A has called for the remand report from the AO. The assessee has made necessary compliances during the remand proceedings. The ld. AR also submitted that the assessee has a strong case on merit. In view of the above, the ld. AR prayed before us to give the direction to the ld. CIT-A for the condonation of the delay in filing the appeal and to decide the issue on merit.

6. On the other hand, the ld. DR opposed to condone the delay in filing the appeal before the ld. CIT-A. The ld. DR also submitted that the

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assessee has also not made the necessary compliance during assessment proceedings. According to the ld. DR, the assessee was not serious in pursuing the appeal filed by him.

7. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the records available before us, we note that there was some error in the address mentioned in the assessment order and other details such as ld. CIT-A order, enquiry made by the AO during the remand proceedings, in the memo of appeal before us, in so far "No. 34" was missing in the address. Thus, apparently it appears that the assessment order was not delivered to the assessee which has resulted delay in filing the appeal. Furthermore, the contentions raised by the assessee that he was illiterate and therefore he could not access the emails and the websites of the income tax department has not been doubted by the ld. CIT-A.

7.1 Besides the above, we note that the ld. CIT-A has also called for the remand report from the AO and such action suggests that the ld. CIT-A was convinced with the delay in filing the appeal by the assessee during the proceedings. It is because, the assessee has duly explained the reason for the delay in filing the appeal i.e. form No. 35 filed before the ld. the CIT-A. Had the ld. CIT-A not been convinced with the delay, there was no reason for him to call for the remand report. As such, we are of the view that once a remand report has been called upon by the ld. CIT-A, then he should have condoned the delay in the interest of justice and fair play in filing the appeal by the assessee.

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7.2 On analysing the facts on merit of the case, we note that the revenue has treated entire cash deposits and cash withdrawals as income of the assessee ignoring the fact that cash withdrawal represents the application of cash deposits only. Therefore, it appears to us that the revenue has made high pitch assessment by making double addition to the total income of the assessee which is not desirable under the provisions of law until and unless the provisions of the income tax act warrant so. Moreover, if we go by the theory of the revenue that the entire cash deposits represent the income of the assessee, then in such a scenario the cash withdrawal should also be treated as an expense of the assessee. Thus, the only net effect of ₹ 2,76,227.00 should have been made subject to the dispute. But the revenue on whimsical ground has made the assessment under section 147 of the Act which is not based on scientific foundation.

7.3 We also note that the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 has held as under:

> ***18.*** *The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as a result of assessee's own mistake or otherwise, the CIT has the power to correct such an assessment under section 264(1) of the Act. If the CIT refuses to give relief to the assessee, in such circumstances, he would be acting de hors the powers under the Act and the provisions of the Act and, therefore is duty-bound to give relief to an assessee, where due, in accordance with the provisions of the Act.*
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> ***19.*** *In the present case, the respondent-CIT has nowhere stated that the petitioner is not entitled to the relief under section 10(10C) of the Act. In fact, the said position is undisputed. The Assessing Officer himself had passed an order under section 154 of the Act, granting such relief. In the circumstances, even the order under section 264 of the Act made on 29-3-2004, cannot be sustained.*

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> ***20.*** *A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandulal Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the following terms:*
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> > *"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."*

7.4 From the above it is revealed that the income of the assessee should not be over assessed even if there is a mistake of the assessee. As such the legitimate deduction for which the assessee is entitled should be allowed while determining the taxable income.

7.5 We also note that the Hon'ble Gujarat High Court in the case of Vareli textile industry versus CIT reported in 154 Taxman 33 has observed as under:

> *It is equally well-settled that where a cause is consciously abandoned (as in the present case) the party seeking condonation has to show by cogent evidence sufficient cause in support of its claim of condonation. The onus is greater. One of the propositions of settled legal position is to ensure that a meritorious case is not thrown out on the ground of limitation. Therefore, it is necessary to examine, at least prima facie, whether the assessee has or has not a case on merits.*

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7.6 In view of the above and after considering the facts in totality, we are of the view that it is a fit case where the delay in filing the appeal by the assessee before the learned CIT-A deserves to be condoned.

7.7 We also note that the assessment was framed by the AO ex-parte to the assessee. As such the assessee did not make the compliance during the assessment proceedings. However, we note that the relevant notices under section 148/ 142(1) of the Act were issued, and the assessment was framed during the covid period. Accordingly, we set aside the finding of the learned CIT-A and restore the issue to the file of the AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

7.8 Regarding the stay petition filed by the assessee, we note that once the main appeal has been decided by us, we do not find any reason to adjudicate the stay petition filed by the assessee. As such the stay petition filed by the assessee becomes infructuous in the given fact and circumstances. Accordingly, we dismiss the same.

8. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced in court on 16th day of July, 2024

Sd/-	Sd/-
(GEORGE GEORGE K)	**(WASEEM AHMED)**
Vice President	Accountant Member

Bangalore,
Dated, 16th July, 2024

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vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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