

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
एवं

श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष

Before

**PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 584/KOL/2024  
Assessment Year: 2019-20**

**Rafiqul Alam.....Appellant  
[PAN: AKUPA 7183 J]**

**Vs.**

**ADIT, CPC, Bengaluru.....Respondent**

**Appearances:**

**Assessee represented by:** Sujit Basu & Rajib Mukherjee, Adv.

**Department represented by:** Amitava Sen, Addl. CIT D/R.

Date of concluding the hearing : June 12<sup>th</sup>, 2024

Date of pronouncing the order : July 23<sup>rd</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2019-20 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-2, Ahmedabad [in short Id. 'CIT(A)'] dated 26.02.2024 arising out of the assessment order framed u/s 143(1) of the Act dated 21.07.2020.

2. The brief facts of the case of the appellant are that the appellant has filed a return of income on 18.03.2020 declaring total income of Rs. 16,10,223/- after claiming deduction u/s 43B of the Act worth of Rs.

16,55,817/-. The Assessing Officer (hereinafter referred to as Id. AO) has disallowed the deduction u/s 43B of the Act and return of income was processed at Rs. 32,66,040/-. The said order has been placed before the appellate authority wherein Id. CIT(A) has dismissed the appeal of the appellant on the ground that it has been filed after a delay of 56 days and no sufficient ground has been shown by the appellant. Being aggrieved and dissatisfied with the appellate order the assessee is an appeal before this Tribunal.

2.1. The sole grievance of the appellant is that Id. CIT(A) did not consider the Hon'ble Supreme Court's decision passed in *Suo moto Writ (Civil) No. 3 of 2020* in which Hon'ble Apex Court has directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as there was COVID restrictions. Id. Counsel for the assessee submits that limitation for filing appeal was expired on 23.07.2020 and the appellant had filed the appeal on 20.10.2020 that is within the time limit but the Id. CIT(A) has ignored the judgement of the Hon'ble Apex Court and dismissed the appeal. The prayer of the appellant is to restore the case to the file of Id. CIT(A) by condoning the delay.

2.2. The Id. D/R has supported the impugned order.

3. We have perused the order of the Id. CIT(A) and find that Id. CIT(A) has dismissed the appeal on the ground that it has been filed belatedly and the ground mentioned in the condonation petition is not maintainable. It is important to mention here that intimation order passed u/s 143(1) of the Act by CPC, Bangalore on 21.07.2020 and it had been sent as alleged on the e-mail. The appeal before the Id. CIT(A) has been filed on 20.10.2020. There is no dispute that from the month of March 2020 lock-down had been started due to the Corona pandemic and it is also in dispute that Hon'ble Supreme Court in *Suo Moto Writ (Civil) No. 3 of 2020* excluded the period started from 15.03.2020 till 28.02.2022 for the purpose of limitation. In several catena of decisions, the Hon'ble Supreme Court has held that the law of limitation being substantive, power of discretion to condone the delay is to be exercised

judiciously and cannot be exercised in a routine manner. Filing of appeal is the rule and condoning the delay is the exception. The present case in hand clearly reveals that the order passed during the Corona period and filing of appeal just after 85 days as stated by the Id. CIT(A) in his order as have already stated in our preceding paragraph that during that period there was Corona pandemic.

4. Keeping in view the above facts, we are of this view that the delay caused was *bona fide* and accordingly, we condone the delay, set aside the orders of both the lower authorities and restore the matter to the file of Id. CIT(A) for fresh decision after giving an opportunity to the assessee to be heard.

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

**Order pronounced in the open Court on 23<sup>rd</sup> July, 2024.**

Sd/-

**[Sanjay Awasthi]**

Accountant Member

Dated: 23.07.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Rafiqul Alam, Masjid Para, P.O. Bagdogra, Siliguri, West Bengal, 734014.**
2. **ADIT, CPC, Bengaluru.**
3. CIT(A)-2, Ahmedabad.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata