

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.599/PUN/2024

निर्धारण वर्ष / Assessment Year : 2009-10

Premadevi Rameshchandra Agrawal, 1 Lakkadkot Bus Stand Road, Jalna – 431 203, Maharashtra PAN : A\FXPA1514K	Vs.	ITO, Ward-1, Jalna
Appellant		Respondent

Assessee by : None  
Revenue by : Shri Manoj Kumar Tripathi  
Date of hearing : 15.07.2024  
Date of pronouncement : 23.07.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi dated 25.01.2024 for the assessment year 2009-10.

2. Briefly, the facts of the case are that the assessee is an individual, filed the Return of Income for the A.Y. 2009-10 on 05.10.2010 declaring total income of Rs.1,94,230/-. Against the said return of income, the assessment was completed by the Assessing Officer (AO) vide order dated 30.11.2016 passed u/s.144 r.w.s.147 of the Act at a total income of Rs.12,04,230/-. While doing so, the AO made addition of cash deposit of Rs.10,10,000/- made with Axis Bank, Jalna on the failure of the assessee to substantiate the sources for the above cash deposit despite several opportunities given to the assessee.

3. Being aggrieved by the above addition, an appeal was filed before the CIT(A)/NFAC on 12.05.2019. The assessee claimed that he received the assessment order only on 14.08.2019. Thus, he claims that there was no delay in filing appeal before the CIT(A)/NFAC. However, the CIT(A)/NFAC taking cognizance of the fact that the assessment order was passed on 30.11.2016 presumed that there is a delay of 985 days in the absence of any petition for condonation of delay, dismissed the appeal *in limine* on the ground of delay placing reliance on the following decisions :

1. Mohd. Ashfaq vs. State Transport Tribunal, UP – AIR 1976 SC 2161, 2162.
2. Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. vs. Shripati Pandurang Khada (1989) Supp (1) SCC 226, 23.
3. Municipal Corporation of Ahmedabad Vs. Voltas Ltd. – AIR 1995 Guj 29, 43 (FB)
4. Calicut Trading Co. Vs. Dy.CCT (1998) 110 STC 195, 199 (Karn.)
5. Union of India Vs. Brijlal Prabhu Dayal – AIR 1999 Raj 216, 221
6. Ramlal Vs. Rewa Coalfields Ltd. – AIR 1962 SC 361,
7. Ashotosh Bhadra Vs. Jatindra Mohan – AIR 1954 Cal 238
8. Soorajmull Nagarmal vs. Golden Fibre & Products – AIR 1969 Cal 381, 384
9. Classic Ispat Pvt. Ltd. Vs. Janak Steel Tubes Ltd. (1998) 93 Comp Cas 165, 167, 169
10. Girdhar Lal M. Pittle vs. Appellate Authority for Industrial and Financial Reconstruction (1998) 94 Comp Cas 225, 228, (Del).

4. Being aggrieved, the assessee is in appeal before the Tribunal in the present appeal.

5. When the matter was called on, none was present for the assessee despite due service of notice of hearing. However, the assessee has filed a petition seeking adjournment of the hearing on the ground that the assessee sought information from the AO as to the actual date of service of the assessment order but we find that the said application

came be disposed off. In the circumstances, the adjournment petition is rejected. We therefore proceed to dispose of the appeal after hearing the Id. Departmental Representative, based on the material available on record.

6. We heard the Id. Departmental Representative and perused the material on record. The short issue that requires to be determined is as to whether there is a delay in filing appeal before the CIT(A)/NFAC. We find the assessee stated in Form No.35 that the assessee had received the assessment order on 14.08.2019 and the appeal came to be filed on 12.09.2019. Thus, according to the assessee, there was no delay in filing the appeal before the CIT(A)/NFAC. However, the Id. CIT(A)/NFAC, going by the date of passing of the assessment order, 30.11.2016, presumed that there is a delay of 985 days and accordingly dismissed the appeal *in limine* in the absence of any petition for the condonation of delay. In the absence of any material on record indicating the contrary to what is stated by the assessee in Form No.35, the CIT(A)/NFAC ought not to have presumed that there was a delay. However, it is always open to the Id. CIT(A)/NFAC to verify the assessment record as to the actual date of service of the assessment order, then reach a conclusion as to whether there was a delay or not, which the CIT(A)/NFAC had failed to do so in the present case. In the circumstances, we are of the considered opinion that, in the interest of justice, the matter be remanded to the file of CIT(A)/NFAC to verify the assessment record and reach a conclusion as the actual date of service of the assessment order. If there is a delay as per the material on record, the CIT(A)/NFAC shall dismiss the appeal *in limine* on the grounds of the delay in filing appeal. If there is no delay, the CIT(A)/NFAC shall adjudicate the appeal on merits based on the

material available on record. Accordingly, the appeal filed by the assessee stands partly allowed for statistical purposes.

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

Order pronounced on this 23<sup>rd</sup> day of July, 2024.

**sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

**sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Pune / Dated : 23<sup>rd</sup> July, 2024.  
*Satish*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.