

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No. 4379/Mum/2023  
(Assessment Year: 2012-13)**

<b>Mohammed Anwar Ali</b> 26/1, Market Street, First Floor, Kolkata, West Bengal- 700016 <b>PAN : AIWPA1333Q</b>	Vs.	<b>ITO (International Taxation), Ward- 1(1) (1), Room No. 19, B Wing, 3<sup>rd</sup> Floor, Mittal Court, Nariman Point, Mumbai-400021.</b>
<b>Assessee)</b>	:	<b>Respondent)</b>

**Assessee/Appellant by** : Shri Piyush Ghahjed, CA  
**Revenue/Respondent by** : Shri R. R. Makwana, Sr. DR

**Date of Hearing** : 16.07.2024  
**Date of Pronouncement** : 23.07.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)-55, Mumbai dated 05.10.2023 for AY 2012-13. The assessee has raised the following grounds of appeal:

“The grounds of appeal mentioned hereunder are without prejudice to one another:

1. The Learned CIT Appeals failed to appreciate that the order dated 12.12.2019 was received by the appellant on 18.12.2019 and therefore due date to file an appeal was 17.01.2020, whereas appeal was filed on 16.04.2020 and therefore there was delay of 90 days and not 96 days as considered by the CIT Appeal in its order.

2. The Learned CIT Appeals erred in disposing off the appeal without condoning the small delay of 90 days in filing the appeal before the CIT Appeal, where the reasons for delay were clearly mentioned in Form No. 35 itself and also filed during the course of appellate proceedings which ought to have been considered and condoned the delay which was due to reasonable and sufficient cause. The appellant had also submitted an online response to the deficiency letter dt. 31.03.2021 served by the learned CIT(A) on 21.04.2021 which also included the reason for delay in filing of the appeal.

3. The Learned CIT Appeals erred in not disposing off the appeals on merits in respect of additions made u/s 69A of the Income Tax Act amounting to Rs. 11,62,000/- and Rs. 24,61,070/-

4. The Learned CIT Appeal erred in confirming the addition of Rs. 96,176/- on account of interest without appreciating that out of the said amount, Rs. 65,410/- was received in NRE Account and therefore exempt for the Non-Resident Assessee.”

2. The assessee is an individual and a non-resident India working in Australia. For the AY 2012-13 the assessee did not file any return of income. The Assessing Officer (AO) received information of individual transaction statement that the assessee has deposited cash of Rs. 11,62,000/- and has received interest income of Rs. 30,766/- during the Financial Year (FY) relevant to AY 2012-13. The AO reopened the assessment of the assessee by issuing notice under section 148 of the Income Tax Act, 1961 (the Act) under the reasonable belief that the income assessable to tax has escaped assessment. Since the assessee has not responded to the notice issued under section 148 of the Act and the subsequent notices issued under section 142(1) of the Act, the AO completed the assessment under section 144 r.w.s. 147 in which he made total addition to the tune of Rs. 37,19,250/-. Aggrieved, the assessee preferred further appeal before the CIT(A). There was a delay of 96 days in filing the appeal before the CIT(A). Since the assessee has not filed any petition for condoning the delay before the CIT(A), the appeal was

dismissed by the CIT(A) without condoning the delay. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The ld. AR submitted that the assessee is a non-resident India working in Australia since 1995 and he seldom visits India. The ld. AR further submitted that the assessee being not in India did not know about the completion of assessment and therefore there was a delay in filing the appeal before the CIT(A). The ld. AR also submitted that the additions made by the AO under section 69A are not correct since the source of the deposits are from his salary income earned in Australia and therefore, cannot be treated as unexplained. The ld. AR prayed that since the assessed could not represent the case properly before the lower authorities one more opportunity shall be given to the assessee.

4. The ld. DR on the other hand vehemently argued that the assessee is a regular defaulter since he has not represented the case either before the AO or before the CIT(A). The ld. DR further submitted that the assessee did not file any petition for condoning the delay in filing the appeal before the CIT(A) and therefore, the CIT(A) has rightly dismissed the appeal in limine.

5. We heard the parties and perused the material on record. The assessee is a non-resident Indian working in Australia since 1995. The assessee has not been filing the return of income in India and based on information received that there have been some cash deposits in the bank accounts of the assessee the AO issued notice under section 148. We notice that the assessee has not responded to the notices issued by the AO and therefore the AO completed the assessment under section 144 r.w.s. 147 of the Act. Before the CIT(A) the assessee filed the appeal against the order of the AO with the delay of 96 days and we notice that the

assessee has not filed any petition for condonation of delay before the CIT(A). We also notice that the assessee has not made any representation before the CIT(A) either for condonation of delay or to represent the case of merit. Considering the facts and circumstances of the case and in interest of natural justice, we are inclined to give one more opportunity to the assessee to represent the case before the CIT(A) by filing the petition for condonation of delay. Accordingly remit the appeal back to the CIT(A) for a denovo consideration with a direction to the assessee to file a proper petition for condonation before the CIT(A). The CIT(A) is directed to consider the petition for condonation based on the circumstances of assessee's case and in accordance with law. The CIT(A) is also directed to call for the relevant details as may be required to decide the case of merits, once the appeal is admitted for adjudication. It is ordered accordingly.

6. In the result, the appeal is allowed for statistical purposes.

*Order pronounced in the open court on 23-07-2024.*

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai