

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

**BEFORE MS KAVITHA RAJAGOPAL, JM AND
SHRI RATNESH NANDAN SAHAY, AM**

ITA No. 1972/Mum/2024
(Assessment Year: 2010-11)

Shri Nizamuddin Mansoorali Sayali Room No. 75, 76, 77, B Block, 4 th Floor, Bundeal Building, Haji Bachu Ali Road, Off. SVP Road, Dongri, Mumbai-400 009	Vs.	ITO, Ward-17(2)(4) Aayakar Bhavan, Mumbai - 400020
PAN/GIR No. ASYPS 9959 C		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Shri R. R. Makwana
Date of Hearing	:	22.07.2024
Date of Pronouncement	:	31.07.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

2. The assessee in this present appeal has challenged the order of the Id. CIT(A) in not condoning the delay of 437 days in filing the appeal before the first appellate authority and had thereby dismissed the appeal of the assessee on this ground.

3. The brief facts are that the assessee is an individual and had not filed his return of income for the impugned year. The assessee's case was reopened u/s. 147 of the Act based on the Individual Transaction Statement (ITS) maintained by the Income Tax Department that the assessee has entered into financial transactions pertaining to cash deposits and credit card payments of Rs.42,75,775/- and purchase/sale of multi commodity transaction of Rs.56,77,09,500/-.

4. The ld. Assessing Officer ('A.O.' for short) passed the assessment order u/s. 144 r.w.s. 147 of the Act on the best judgment assessment vide order dated 29.12.2017 and determined the total income at Rs.48,43,490/- by making an addition on business income amounting to Rs.5,67,710/- and on unexplained cash credit u/s. 68 of the Act amounting to Rs.42,75,775/-.

5. The assessee was in appeal before the first appellate authority, challenging the assessment order.

6. The ld. CIT(A) vide order dated 11.03.2024, dismissed the appeal of the assessee for the reason that the assessee has filed the appeal with a delay of 437 days without getting into the merits of the case.

7. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

8. We have heard the learned Departmental Representative (ld. DR for short) and perused the materials available on record. It is observed that the assessee has challenged the additions made by the ld. A.O. before the first appellate authority but has filed the

appeal with a delay of 437 days. The assessee has contended that the assessee was living in a tenanted premises which was vacated and thereafter the assessee migrated to Dubai in the year 2011-12 and had also furnished the resident permit to substantiate the same before the Id. CIT(A). The assessee further stated that the assessee had not received any of the notices issued u/ss. 148 and 142(1) of the Act due to the change in the address and therefore, the delay in filing the appeal before the first appellate authority was due to non receipt of the order passed u/s. 144 r.ws. 147 of the Act.

9. The Id. CIT(A) rejected the assessee's contention stating that there was no sufficient cause for the said delay.

10. Aggrieved the assessee is in appeal before us.

11. As this matter came up for hearing before us, the learned Departmental Representative (Id. DR for short) vehemently opposed to allowing the assessee's prayer for the reason that the assessee has failed to explain the delay in filing the appeal before the Id. CIT(A) with sufficient cause and has also be non compliant during the assessment proceeding.

12. On the above factual matrix of the case and after hearing the learned Departmental Representative (Id. DR for short), we are of the considered view that the assessee may be given one more opportunity to present his case before the first appellate authority by adhering to the principles of natural justice. We, therefore, direct the Id. CIT(A) to condone the delay in filing the appeal before the first appellate authority for the reason that there is reasonable and sufficient cause for the said delay and we, therefore, remand

all these issues back to the file of the ld. CIT(A) for *de novo* adjudication on the merits of the case based on the submissions, if any, made by the assessee. The assessee is directed to comply with the proceedings without any undue delay on his side.

13. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 31.07.2024

Sd/-

(Ratnesh Nandan Sahay)
Accountant Member

Mumbai; Dated : 31.07.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai