

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1682/MUM/2024
Assessment Year: 2015-16**

Farees Ahmed Khalil Ahmed
Shaikh,
702 20, B Wing Makali Park, 336
Bazaar Road, Bandra (W),
Mumbai-400050.

PAN NO. DRDPS 8448 K
Appellant

National Faceless Assessment
Centre,
ITO-23(1)(1),
Mumbai.

Vs.

Respondent

Assessee by : Mr. K Gopal
Revenue by : Mr. Ashish Kumar, Sr. DR

Date of Hearing : 24/06/2024
Date of pronouncement : 24/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 21.08.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

I. Legal grounds:



1. The Ld. National Faceless Appeal Centre, Delhi [hereinafter referred to as the 'NFAC'] erred in passing the order dated 21.08.2023 treating the appeal filed by the Appellant as barred by limitation by refusing to condone the delay of 278 days. The Ld. NFAC failed to appreciate that the delay in filing the appeal was due to reasonable and sufficient cause. Thus, the delay of 278 days was not due to any malafide reasons and the same should have been condoned. Hence, the action of the NFAC in passing the said order is arbitrary and therefore, bad in law.

2. The Ld. NFAC is not justified in passing the ex-parte order dated 21.08.2023 without providing the Appellant a reasonable opportunity of being heard. Thus, the impugned order passed is in gross violation of the principles of natural justice and hence, unlawful, and bad in law.

II. On merits:

3. The Ld. A.O. is not justified in passing the assessment order dated 28.03.2022 and making addition amounting to Rs.2,62,20,190/- under section 69 of the Act by treating the total sale consideration of the immovable property agreed to be purchased by the Appellant as unexplained investment without appreciating the facts and circumstances of the present case. Thus, the addition made under section 69 of the Act is without any basis and deserves to be deleted.

4. The Ld. A.O. is not justified in passing the assessment order dated 28.03.2022 and making addition amounting to Rs.2,62,20,190/- under section 69 of the Act without appreciating that the payments made towards the purchase of the said immovable property were through proper banking channels. Thus, the addition made under section 69 of the Act is arbitrary, unwarranted and therefore, bad in law.

5. The Ld. A.O. is not justified in passing the assessment order dated 28.03.2022 and making addition under section 69 of the Act without appreciating that the Appellant had purchased the said immovable property partially out of foreign remittances from his bank account in UAE as well as from the housing loan sanctioned by the ICICI Bank. Thus, the onus cast upon the Appellant to prove the source of investment under section 69 of the Act stands discharged and the addition made under section 69 of the Act deserves to be deleted.

2. At the outset, the Ld. counsel for the assessee submitted that Ld. CIT(A) has not condoned the delay of 278 days in filing appeal and dismissed the appeal of the assessee. He submitted that the assessee was prevented by the sufficient cause in not filing the appeal within the limitation period. He submitted that the assessee is a non-resident Indian and notice was sent at address of his



father. But due to change of residence of his father, the notice was received by the watchman of the building. On receipt of the notice by the father of the assessee, the assessee checked on e-filing portal and thereafter, he engaged a Chartered Accountant and filed the appeal on 31.01.2023 as against due date of filing appeal on 27.04.2022. According to him there is a justified reason for delay of 278 days in filing the appeal. The Ld. counsel for the assessee submitted that the Tribunal in ITA No. 3742/Mum/2023 in the case of assessee while disposing appeal against penalty matter for the year under consideration, has condoned the delay of 101 days and restored the appeal for adjudication to the file of the Ld. CIT(A). He accordingly submitted that this appeal might also be admitted and restored to the file of the Ld. CIT(A) for deciding afresh.

3. The Ld. Departmental Representative (DR) on the other hand, opposed the condonation of the delay.

4. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) dismissed the appeal as un-admitted observing as under:

“3. I have gone through the impugned order of the AO, 'Statement of Facts', 'Grounds of Appeal', application for condonation of delay and submission of the appellant. The appeal in the present case has been filed late by 278 days and the appellant has requested for condonation of delay in filing of appeal. The appellant has requested for condonation of delay in filing of appeal citing reasons of his living abroad. He has mentioned that he received the order from watchman of the building in September, 2022. Even though, he allegedly received the impugned order in September, 2022 he did not care for filing of appeal in October, 2022 i.e. within 30 days of receiving the impugned order along with notice u/s 156 of the Income Tax Act (the Act) and filed appeal after four months, Notwithstanding this, it is noticed that



Income Tax department sent notice to him on the e-mail address, provided by him. All this shows casual approach on his part. So the explanation of the appellant - that delay in filing of appeal was on account of his living abroad does not appear to be convincing as these were available online - is not acceptable. Considering all this, delay in filing of appeal is not condoned and the appeal is dismissed.”

4.1 Before us, the Ld. counsel for the assessee has filed a copy of the affidavit filed by the assessee, wherein he has submitted the reasons for non-filing of the appeal within the limitation period, which are extracted as under:

“8. That, I was unaware of any reassessment/penalty proceedings initiated against me as all the notices and the orders pertaining to the same were served in the month of September, 2022 at my father's residence at Mumbai, which was lying vacant/unoccupied since a very long time on account of change of his place of residence from Mumbai to Goa.

9. That, I could not receive any of the notices and assessment as well as penalty order on the e-mail address which was available on the Income tax E-filing portal as the same was blocked by Google on the suspicion of involvement in spam-related activities. The said mail account could not be recovered even after several repeated attempts and the same is inaccessible till date.

10. That, it is only in the last week of December, 2022, when my father returned to Mumbai for a brief stay, the watchmen of the building handed over all the notices as well as the orders received by him in his absence.

11. That, after going through the notices and the orders, my father realized that the assessment and penalty orders have been passed in my case raising huge demand and penalty. Thus, immediately my father informed me about the assessment and penalty order.

12. That, thereafter, I checked my account on E-filing Portal and gone through the assessment and penalty order passed by the Assessing Officer. Then, I, immediately informed my Chartered Accountant, Mr. Prashant Pathak, regarding the assessment as well as penalty order in the month of January 2023.

13. That, the Chartered Accountant, after downloading all the relevant orders from the portal and after acquiring all the details and documents relevant for the purpose of filing an appeal, filed the present appeal before the Appellate Authority on 31.01.2023.



14. That, the time limit of 30 days to file an appeal against the assessment order dated 28.03.2022 before the Appellate Authority was available till 27.04.2022.

15. That, there is a delay of 278 days in filing the appeal before the Appellate Authority.

16. That, the delay for filing the present appeal was on account of circumstances beyond my control and in absence any deliberate or mala fide intention on my part to cause any such delay.

17. That, I submit that if the unintended delay of 278 days in filing the appeal before the Appellate Authority is not condoned then, I will be subjected to injustice and undue hardship.”

4.2 Further, we find that this appeal being filed against the quantum proceedings, whereas in appeal filed in relation to penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 (in short ‘the Act’) arising from the very same quantum proceedings also, there was a delay of 101 days in filing the appeal before the Ld. CIT(A). The Tribunal (supra), however condoned the delay observing as under:

“6. The Hon'ble Supreme Court of India in the case of Ram Nath Sao alias Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors. (2002) 3 SCC 195) has held that acceptance of explanation furnished should be the rule and refusal, an exception. The Hon'ble Court held:

“12..... There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party



against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

7. The Hon'ble Apex Court in the case of Collector Land Acquisition, vs Mst. Katiji & Ors., 167 ITR 471(SC) held that the explanation furnished by the assessee for seeking condonation should be accepted. The expression "sufficient cause" should be interpreted liberally.

8. We find that in the instant case the First Appellate Authority has taken a pedantic approach in rejecting assessee's reasons explaining delay in filing of appeal. After considering the reasons given by the assessee causing delay in filing of first appeal, we are satisfied that the delay in filing of appeal was for the bonafide reasons and not intentional. Thus, delay of 101 days in filing of first appeal is condoned. The appeal is restored to the CIT(A) for adjudication on merits. The CIT(A) shall grant reasonable opportunity of hearing/make submissions before deciding the appeal, in accordance with law."

4.3. We have perused the reasons submitted by the assessee for delay in filing the appeal. In our opinion, the assessee was prevented by sufficient cause in not filing the appeal within the limitation period and in identical circumstances, the Tribunal (supra) has condoned the delay of 101 days in filing the appeal. Therefore, respectfully following the finding of the Tribunal (supra) we condone the delay in filing the appeal before the Ld. CIT(A) being for bonafide reasons and not intentional. The appeal is restored back to the file of Ld. CIT(A) for adjudication on merit. The Ld. CIT(A) shall grant reasonable opportunity being heard to the assessee. Accordingly, ground Nos. 1 and 2 of the appeal of the assessee are allowed. Since we have already restored the appeal to Ld CIT(A) , grounds of the appeal involving merit of the addition are not required to be adjudicated at this stage.



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

Order pronounced in the open Court on 24/07/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/07/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai