

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3148/Mum/2024
Assessment Year: 2011-12

Shri Arun Madhavachari Rangachari C/o Shah & Taparia 203, Centre Point Building 100, Babasaheb Ambedkar Road Opp.- Bharatmata Cinema Parel (Maharashtra)- 400012 [PAN: AMDPR8746F]	Vs	Deputy Commissioner of Income Tax, (International Taxation), Circle-4(1)(2), Mumbai
--	----	--

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	--------------------------

Assessee by :	Ms. Vinita Shah, A/R
Revenue by :	Smt. Sahileja Rai, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 01/08/2024
घोषणा की तारीख /Date of Pronouncement: 01/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of Id. CIT(A) -58, Mumbai, dt. 30/01/2023 pertaining to Assessment Year 2011-12.

2. The grievance of the assessee reads as under:-

“1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order without granting sufficient opportunity of being heard to the appellant.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in dismissing the appeal, by not allowing the condonation of delay, without granting opportunity of being heard to the appellant.

3. *On the facts and circumstances of the case as well as in law the Learned CIT(A) has erred in not adjudicating the ground of reopening the assessment u/s.147 of the Income Tax Act, 1961 by the Learned Assessing Officer, without considering the facts and circumstances of the case.*

4. *On the facts and circumstances of the case as well as in law the Learned CIT(A) has erred in not adjudicating the ground of appeal that the Learned Assessing Officer has made the addition of Rs.3,25,50,00,000/- without considering the facts and circumstances of the case.*

5. *Without prejudice to the above, the Learned CIT(A) as well as the Learned Assessing Officer has erred in not appreciating the fact that the entire amount was already added in AY 2009- 10 and adding the same again would lead to double taxation.*

6. *On the facts and circumstances of the case as well as in law the Learned CIT(A) has erred in not adjudicating the ground of appeal that the Learned Assessing Officer has made an addition of Rs.69,12,21,810/- on account of alleged unexplained investments, without considering the facts and circumstances of the case.*

7. *The appellant craves leave to add, amend, alter or delete the said ground of appeal."*

3. This appeal is barred by limitation. The assessee moved an application for condonation of delay in filing of appeal supported by an affidavit dt. 10/06/2024. Opposing the condonation application, the ld. D/R strongly pointed out that even before the First Appellate Authority, the assessee did not file the appeal on time and did not appear and the ld. CIT(A) was left with no choice but to decide the appeal *ex-parte*. It is the say of the ld. D/R that the assessee is a habitual defaulter and does not deserve any sympathy from any appellate authority. The D/R also submitted the screenshot of e-mail notice which was duly served and still the assessee chose not to file the appeal on time.

4. We have given a thoughtful consideration to the submissions of the Id. D/R and have carefully considered the condonation application along with the affidavit. We find that the assessee is an individual and a non-resident. He file his return of income on time. The return was re-opened u/s 147 of the Act and the assessment order was framed by the AO on 26/12/2019. The returned income of Rs.1.89 Lakhs was assessed at Rs.3,94,64,10,810/-. The assessee preferred appeal before the Id. CIT(A) but the appeal was filed after the expiry of period of limitation by 34 days. The Id. CIT(A) dismissed the appeal *in limine*.

5. We are of the considered view that justice should not be denied on technical grounds. In our humble opinion, the Id. CIT(A) ought to have decided the appeal on merits of the case. Even if it was barred by limitation, the Id. CIT(A) ought to have called for explanation from the assessee. Even if the appeal is filed beyond limitation before us, we deem it fit to restore the entire quarrel to the file of the Id. CIT(A) with a direction to decide the appeal afresh after affording a reasonable and adequate opportunity of being heard to the assessee by serving proper notice and the assessee is directed to avail this second innings.

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

Order pronounced in the Court on 1st August, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 01/08/2024

SP SP

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. ँ पीलरुी / The Appellant
2. प्रत्यरुी / The Respondent
3. संबधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (ं पील) / The CIT(A)-
5. विभरुीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai