

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

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.710 & 789/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Ali Mohmmmed Vali Mohmmmed Hingora, Basmath Road, Karegaon- 431401. PAN : ANOPK6571F	Vs.	ITO, Hingoli, Parbhani
Appellant		Respondent

Assessee by : Shri Rajendra Agiwal
Revenue by : Shri Ramnath P. Murkunde
Date of hearing : 23.07.2024
Date of pronouncement : 05.08.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

Both the above captioned appeals filed by the assessee are directed against the order dated 13.02.2024 passed by LD CIT(A)/NFAC for the assessment year 2017-18 respectively.

2. Since both the appeals were heard together, therefore, we proceed to dispose of both the appeals by this common order.

ITA No.710/PUN/2024 :

3. When the appeal was called for hearing, LD counsel appearing for the assessee submitted that, originally the appeal

against the impugned penalty order was filed manually without digital signatures & number 710/PUN/2024 was allotted by the Registry. But, thereafter Registry pointed out the defect of digital signatures, & therefore the appeal was again filed with digital signatures, which was allotted number 789/PUN/2024. Today i.e. on 23.07.2024, both the appeals are listed for hearing before us, which are filed against the same penalty order for same assessment year & therefore the counsel requested before us to withdraw the manually filed appeal number 710/PUN/2024 which was not signed by digital signatures. LD DR has no objection in withdrawing the appeal by the assessee. We therefore dismiss the appeal as withdrawn.

4. In the result, the appeal of the assessee in ITA No.710/PUN/2024 stands dismissed.

ITA No.789/PUN/2024 :

5. The appellant has raised the following grounds of appeal :-

“1. On the facts and circumstances of the case and in law:

- 1. The Ld. CIT(A) erred in not condoning the delay of 232 days and dismissed the appeal without considering the merits of the case.*
- 2. The Ld. CIT(A) erred in confirming the penalty u/s 271AAC of Rs. 61,413*

2. 3. *The Ld. CIT(A) is unjustified in confirming the penalty without waiting for the outcome of appeal against assessment order challenging addition u/s 69A.*
4. *The Ld. CIT(A) erred in rejecting the explanation of the appellant that cash deposited is not unexplained and is from regular source of business income and therefore penalty u/s 271AAC cannot be levied.*

The appellant craves, leave to add, alter, modify, delete all or any of the grounds of appeal.”

6. From perusal of above grounds of appeal, it is found that LD CIT(A)/NFAC has dismissed the first appeal on the ground of delay of about 18 months. It is further found that the matter involves imposition of penalty of Rs.37,200/- u/s 271AAC of the IT Act. The facts of the case are that the order of assessment was passed *ex-parte* u/s 144 of the IT Act, which also follows the *ex-parte* order for imposition of penalty of Rs.37,200/- u/s 271AAC of the IT Act. The reason behind *ex-parte* order was sudden untimely death of the counsel of the assessee namely Shri Sai Prakash Anumula on 11-04-2021 due to Covid. It is the submission of the counsel of the assessee that the above named tax consultant was looking after all the matters related to taxation & his email id was mentioned on the ITBA portal of the Department & because of his sudden death the assessee was unaware with the

pending penalty proceedings & therefore could not appear on the date of hearings before the AO, which resulted in *ex-parte* order. It was also submitted that someone appeared in penalty proceedings from the office of the earlier counsel, but did not inform the assessee in this regard. It was the contention of the counsel of the assessee that the *ex-parte* order of penalty was not known to the assessee & therefore as soon as he came to know about the *ex-parte* orders, the first appeal was filed with a delay of about 18 months through a new counsel. Under these circumstances, it was requested before the bench to set-aside the order passed by LD CIT(A)/NFAC & further requested to direct him to provide one more opportunity of hearing to the assessee, so that the assessee can support the grounds of appeal on merits of the case.

7. We have heard LD counsels from both the sides & perused the material available on record, including the death certificate of earlier counsel of the assessee. We find force in the arguments of the counsel of the assessee that due to death of earlier counsel, the assessee was unaware with the pending penalty proceedings & its order, which came to his knowledge in February 2024, when the

assessee approached the office of the counsel of the assessee for filing of income tax returns, therefore, there was reasonable cause for not presenting the first appeal within the prescribed time period. We therefore in the interest of justice deem it appropriate to set-aside the order passed by LD CIT(A)/NFAC with a direction to condone the delay & decide the appeal on merits. LD CIT(A)/NFAC shall decide the appeal as per facts & law after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to respond to the notice issued by ld. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which ld. CIT(A)/NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. Thus, the grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal filed by the assessee in ITA No.789/PUN/2024 is partly allowed for statistical purposes.

9. To sum up, the appeal of the assessee in ITA No.710/PUN/2024 stands dismissed and the appeal of the assessee

in ITA No.789/PUN/2024 stands partly allowed for statistical purposes as indicated above.

Order pronounced in the open Court on 05th August, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th August, 2024.

Sujeet

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, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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