

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 3578/Mum/2023 (Assessment Year: 2014-15)
ITA No. 3618//Mum/2023 (Assessment Year: 2015-16)
ITA No. 3621/Mum/2023 (Assessment Year: 2016-17)
ITA No. 3620/Mum/2023 (Assessment Year: 2017-18)

Shashank Jayawant Nabar 203-204, Wadhwa Pristine, Balgovindas Road, Next to Ruparel College, Mahim, Mumbai-400 016	Vs.	DCIT, Circle 22(1) Mumbai
PAN/GIR No. AEKPN 1222 M		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Ashok Patil
Respondent by	:	Shri Suhas Dabade
Date of Hearing	:	01.08.2024
Date of Pronouncement	:	09.08.2024

ORDER

Per Kavitha Rajagopal, JM:

The captioned appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.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 relevant Assessment Years (‘A.Y.’ for short) 2014-15 to 2017-18.

2. As the facts are identical in all these appeals, we hereby pass a consolidated order. The only solitary issue that the assessee has raised in all these appeals is that the ld. CIT(A) has without giving sufficient opportunity failed to condone the delay in filing the appeal before the first appellate authority, thereby denying the credit for tax deducted at source where the deductor has already deducted TDS while making payments to the assessee but has failed to deposit the same to the exchequer.

3. It is observed that these appeals have been filed belatedly beyond the period of limitation for which the assessee has filed Affidavits stating the reason for the said delay and has prayed for condoning the same. On perusal of the same it is observed that the assessee being a senior citizen has stated that he was suffering from Colon Cancer and was undergoing treatment for the same and, therefore, was unaware of the order of the Id. CIT(A). On considering the submissions of both the sides, we deem it fit to condone the delay in filing these appeals for the reason that the assessee has explained that there was 'sufficient cause' for the said delay. Delay condoned.

4. Brief stated the assessee is an individual resident, rendering professional services in the Merchant Shipping Industry and had filed his return of income for the impugned years, declaring total income from various sources as profit and gains from business/profession. The same was processed u/s. 143(1) of the Act where the CPC/A.O. denied tax credits on consultancy income received from M/s. Varun Shipping Co. Ltd. who had deducted TDS while making payment to the assessee but the same was not reflecting in Form 26AS. The Id. A.O. made an addition on the said amount, thereby raising a demand on the assessee.

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

6. The Id. CIT(A) vide his order, dismissed the appeal filed by the assessee for the reason that there has been a delay of more than 1000 days which has not been explained by the assessee as to whether there was any sufficient or reasonable cause for the delay in filing the said appeals before the Id. CIT(A), thereby upholding the order of the Id. A.O.

7. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).
8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but the appeals have been filed belatedly after the period of limitation prescribed by the Act. The Id. CIT(A) in his order has stated that the assessee has not specifically given the reason for the delay in filing the appeal.
9. Before us, the assessee has filed an Affidavit stating the reason why the assessee could not file the appeal on time before the first appellate authority. The assessee has contended that partly due to Covid and also for the reason that the assessee was undergoing treatment for colon cancer and further the assessee was out of country to visit his son in the US, were the reasons for the long delay in filing the appeal. On considering the rival contentions, we are of the considered opinion that the assessee had 'sufficient cause' for the delay, though the same was not explained categorically before the Id. CIT(A). It is also pertinent to point out that the various decisions of the Hon'ble High Courts and the Hon'ble Apex Court has reiterated that the technical defects should not be construed strictly and rather the legality of a case has to be the basis of the decisions of the courts. In the recent decision of the Hon'ble Apex Court in the case of *Mool Chandra vs. Union of India* (in Civil Appeal Nos. 8435 – 8436 of 2024 vide order dated 05.08.2024) the issue of condoning the delay has been dealt with by the Hon'ble Apex Court that when the petitioner has shown sufficient cause for the delay then a liberal approach or justice oriented approach has to be taken in condoning the delay and in such

case, it is not the period of delay but the reason for the said delay has to be taken into consideration and whether or not there has been negligence on the part of the assessee is to be weighed and not merely the number of days of delay.

10. Having said that, we deem it fit to remand all these appeals back to the file of the Id. CIT(A) with a direction to condone the delay in filing the appeals before the first appellate authority by duly considering the Affidavit along with the additional evidences proposed to be filed by the assessee. The assessee is directed to file fresh Affidavits before the Id. CIT(A) stating the reasons for the delay and to co-operate with the proceeding before the first appellate authority. Needless it is to state that the assessee should be given sufficient opportunity to present his case and the issues are to be decided on the merits and in accordance with law. As we have not gone into the merits of the case, this order has no impact on the issues raised by the assessee on the merits and the same has to be adjudicated *de novo* by the Id. CIT(A).

11. In the result, all the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 09.08.2024

Sd/-

(Amarjit Singh)
Accountant Member

Sd/-

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 09.08.2024

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai