



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.686 & 687/PUN/2024
निर्धारण वर्ष / Assessment Years : 2017-18 & 2018-19

Prakash Madhav Kolhe, 3, Shri Shilpa at Radha Sona, ITI Ambad Link Road, Kamatwada, Nashik-422010. PAN: ACLPK4828P	Vs	The Income Tax Officer, Ward-2(1), Nashik.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Smt. Abhilasha Pawar – AR
Revenue by	Shri Sourabh Nayak – Addl.CIT(DR)
Date of hearing	08/08/2024
Date of pronouncement	09/08/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These two appeals filed by the assessee are against the separate orders of Id.Commissioner of Income Tax(Appeals)[NFAC] passed under section 250 of the Income Tax Act for A.Y.2017-18 and A.Y.2018-19 both dated 27.02.2024 emanating from penalty orders under section 270A of the Act. The grounds of appeal raised by the assessee for A.Y.2017-18 are as under :



“1. The learned CIT is not justified in levying penalty u/s 270A of Rs.1,33,390/- on the ground that the assessee had misreporting his income by Rs. 1,50,918/- in consequence of misreporting without appreciating that the said levy of penalty was not justified in law.

2. The learned CIT failed to appreciate that before the A.O., the assessee had duly explained that under reporting of income in his case was attributable to wrong action of tax consultant and all the material facts relating thereto along with substantiating evidences in form of complaint filed against Tax Consultant before Economic Wing of Police Department etc. were also furnished by the assessee and therefore, the levy of penalty u/s 270A without rebutting the explanation offered by the assessee was not justified in view of provisions of the said Act.

3. The learned CIT ought to have appreciated that the bona fides of the explanation offered by assessee were established from the fact that the assessee, being salaried employee from technical background, was totally dependent upon the tax consultant for filing income tax return and no such incorrect claim was ever made by the assessee either in past years or in subsequent years and therefore, the levy of penalty u/s 270A was not justified in view of the explanation offered by the assessee.”

Findings & Analysis :

2. We have heard both the parties and perused the records. It is observed that Id.CIT(A) for A.Y.2017-18 dismissed the appeal of the assessee on the ground that there has been delay of 404 days in filing appeal. Similarly, Id.CIT(A) dismissed the appeal of the



assessee on the ground that there has been delay of 403 days in filing appeal. According to ld.CIT(A), there was no sufficient reason for delay in filing appeal. Therefore, ld.CIT(A) dismissed both the appeals of the assessee without discussing the merits of the case.

2.1 The ld.AR submitted that assessee is a salaried employee, does not have any knowledge of Income Tax and its Proceedings. It was submitted that assessee had not received the copies of the orders and notices as assessee is not well-versed with the systems. Ld.AR further submitted that during that period the Assessee was ill and was advised rest by his doctor. Ld.AR submitted copy of the certificate issued by the doctor. Ld.AR also submitted that during that period there were many glitches on the Income Tax website. Therefore, the Ld.AR pleaded that delay may kindly be condoned.

3. In both the cases, Assessing Officer(AO) has levied the penalty u/sec.270A of the Act. The penalty orders were dated 18.01.2022 and 19.01.2022 for A.Y.2017-18 and A.Y.2018-19 respectively. As per section 249(2) of the Income Tax Act the



appeal before the CIT(A) shall be filed within 30 days of service of the impugned order.

3.1 From 15.03.2020 there was Lockdown i.e. Covid-19 in the entire country. Therefore, the Hon'ble Supreme Court has suo-moto taken cognizance in Re: Cognizance for Extension of Limitation in Suo-motu W.P. (C) No. 3 of 2020 and extended the limitation dates from 15.03.2020 to 01.03.2022. Therefore, this period needs to be excluded while calculating delay in filing of appeal. The substantial justice is more important, especially in the cases of penalty. When the issue of Technical and substantial Justice are pitted against each other, the course of substantial justice would prevail. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. We are convinced that there was sufficient reason for delay in filing appeal. Therefore, in the larger interest of justice, we direct the ld.CIT(A) to condone the delay in both these appeals and decide the issue on merits. Accordingly, order of ld.CIT(A) is set-aside to ld.CIT(A) for de-novo adjudication. The ld.CIT(A) shall provide



an opportunity of being heard to the assessee. Accordingly, grounds of appeal raised by the assessee in both the appeals are allowed for statistical purpose.

4. In the result, both appeal of the assessee are allowed for statistical purpose.

Order pronounced in the open Court on 9th August, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 9th August, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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