

2. The assessee is an individual and filed the return of income for AY 2014-15 on 31.07.2014 declaring a total income of Rs. 63,85,530/-. The return was processed under section 143(1) and an intimation under the said section dated 11.03.2016 was issued computing the total income of the assessee at Rs. 96,30,560/-. While processing the return under section 143(1) an addition of Rs. 38,25,454/- to the net Short Term Capital Gain (STCG) whereby the set off of brought forward loss from AY 2012-13 was denied to the assessee. Aggrieved, the assessee filed appeal before the CIT(A). There was a delay of 71 days in filing the appeal before the CIT(A). In the Form-35 filed before the CIT(A) the assessee had stated the reasons for delay in filing the appeal which is extracted below:

“The appellant had filed e-return of income in ITR-3 for the assessment year 2014-15 on 31.07.2014 declaring net total income of Rs. 63,85,530. The return was processed electronically and an intimation u/s 143(1) dt. 11.03.2016 issued by the Ld. A.O (CPC) Bangalore, was received on 15.03.2016 determining total income at Rs.96,30,560 and in process making an unauthorized addition/disallowance of Rs 32,45,030 to the returned income under the head Income from Capital Gains. This resulted into a demand of Rs. 13,12,550. Your appellant had filed an e-rectification on 19.04.2016 bearing reference no. 2942427669 against the intimation order u/s. 143(1) dt. 11.03.2016. The rectification application is yet to be disposed off by Ld. A.O. (CPC). Your appellant is now filing this appeal against the intimation us. 143(1) dt. 11.03.2016. Since, your appellant was pursuing alternative remedies under the law, this is sufficient in view of the facts that the application dt. 19.04.2016 of your appellant for rectification u/s 154 to CPC has remained to be disposed off is the cause for not filing the present appeal in time by 15.04.2016 and therefore the delay. if any, of 71 days in filing the appeal may please be condoned. On admission, the appeal would be decided on the merits of the case and therefore admission of the appeal would not prejudice the interest of the Income Tax department. The appellant shall be left with no alternative recourse in law in case that request for admission of appeal by condonation of delay is not entertained. Natural justice demand that the delay be condoned and appeal be admitted. In view of the above, we request for condonation of the delay in filing of the said appeal for AY 2014-15. In case of need, kindly grant an opportunity for personal hearing to explain in person the facts behind in filing the Appeal.”

3. However, the CIT(A) did not condone the delay and dismissed the appeal in limine.

4. We heard the parties and perused the material on record. During the course of hearing the Id. AR submitted an affidavit containing the reasons for delay in filing the appeal before the CIT(A). It is stated that the assessee has filed an application for rectification under section 154 of the Act and was hoping that the issue would get resolved once the rectification petition is disposed of. It is also stated that since the rectification petition was pending to be disposed of the assessee decided to file the appeal before the CIT(A) and hence the delay. Considering the fact that assessee being a senior citizen and that was genuinely pursuing the alternate remedy to resolve the issue, we are of the view that there is a reasonable cause for the delay in filing the appeal before the CIT(A). Therefore, we remit the appeal back to the CIT(A) with a direction to condone the delay in filing the appeal and consider the issue of merits. The assessee is directed to file the copy of the petition for condonation of delay before the CIT(A) and also submit the necessary documentary evidences with regard to the merits of the issue. It is ordered accordingly.

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

Order pronounced in the open court on -08-2024.

Sd/-
(SUNIL KUMAR SINGH)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai