

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.3169/Del/2023
[Assessment Year : 2014-15]**

Lakhram Goyal, House No.436/16, Civil Lines, Gurgaon, Haryana-122001. PAN-BJRPG2764E	vs	ITO, Ward-1(4), Gurgaon.
APPELLANT		RESPONDENT
Appellant by	Shri Ajit Gandhi, CA	
Respondent by	Shri Subhra Jyoti Chakraborty, CIT DR	
Date of Hearing	21.08.2024	
Date of Pronouncement	27.08.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 16.11.2022 for the assessment year 2014-15.

2. The assessee has raised following grounds of appeal:-

1. *"The Order passed u/s.250 by the Commissioner of Income-tax (Appeals) Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, is without granting proper opportunity to the appellant therefore is in violation of principles of natural justice.*
2. *That on the facts and circumstances of the case and in law, the order passed by the learned Commissioner of Income-tax (Appeals) Income Tax Department National Faceless Appeal Centre (NFAC), Delhi is bad both in the eye of law and on facts.*

3. *That on the facts and circumstances of the case and in law, the is order passed by the learned Commissioner of Income-tax (Appeals) Income Tax Department National Faceless Appeal Centre (NFAC), Delhi without considering material on record submitted by the appellant during physical hearing of the appeal represented before Hon'ble CIT(A), Gurgaon.*
4. *That on the facts and circumstances of the case and in law, the is order passed by the learned Commissioner of Income-tax (Appeals) Income Tax Department National Faceless Appeal Centre (NFAC), Delhi without considering matters raised in grounds of appeal.*
5. *On the facts and circumstances of the case, the learned National Faceless Appeal Centre (NFAC), Delhi grossly erred in upholding views formed by assessing officer in not allowing capital loss of Rs. 14,48,80,704/- claimed by the appellant*
6. *That on the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in confirming assessment concluded at an income of Rs. 14,52,31,460/- without setting off of capital loss to the tune of Rs. 14,48,80,704/-.*
7. *That on the facts and circumstances of the case and in law the learned National Faceless Appeal Centre (NFAC), Delhi despite the matter of formation an opinion to prove the genuineness of interest free advances is on record of earlier years returned and assessment records.*
8. *That the grounds of appeal as herein are without prejudice to each other.”*

3. This appeal is barred by time. There is a delay of 196 days in filing the appeal by the assessee as reported by the Registry. An application seeking condonation of delay has been filed by the assessee.

4. Ld. Counsel for the assessee appearing on behalf of the assessee, reiterated the submissions as made in the application. The assessee has also filed an affidavit dated 07.11.2023 in support of the application. For the sake of clarity, the relevant contents of the affidavit are reproduced as under:-

“That I the above named deponent am well conversant with the facts deposed to below.

1. *That the appeal filed me before the 1st Appellate Authority in Appeal no. CIT (A), Gurgaon- 1/11176/2016-17, was disposed of by order dated 16.11.2022 passed by the Commissioner Of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.*
2. *That the time for filing of the appeal before the Tribunal was to expire on 16.01.2023.*
3. *That the appeal so filed was heard from time to time by Ld. CIT (A), Gurgaon, during physical hearings and I had duly placed on record detailed written submissions and documents in support of my contentions.*
4. *That it was communicated during physical hearing that the matter in appeal shall be disposed off upon receipt of remand report from assessing authority.*
5. *In the meantime the appeal jurisdiction was transferred to National Faceless Appeal Center Delhi.*
6. *It was learnt for the first time upon receipt of a notice dated 31.10.2023 issued under section 274 read with section 271(1)(c) of the Income Tax Act, 1961, received from the from the Office Of The Income Tax Officer Ward 1(4) Gurgaon levy of penalty U/s 271(1)(c) of Income Tax Act, 1961, that the appeal filed before the 1st appellate authority is dismissed ex-party vide order dated 16.11.2022.*

7. *That prior to receipt of notice dated 31.10.2023, I was under a bona fide impression that a hearing in the matter will be granted to be by 1st appellate authority after considering material on record filed during physical hearing and obtaining remand report from assessing Officer.*
8. *That till 31.10.2023 I was under a belief that the 1st appellate proceedings are still under progress and the matter in appeal is still pending adjudication.*
9. *That the memo of Appeal ever dated is being filed simultaneously in the Office of the Income tax Appellate Tribunal, Delhi.”*

5. Ld. Counsel for the assessee prayed for condonation of delay and submitted that there was a reasonable cause for such delay and an affidavit dated 07.11.2023 was submitted by the assessee. Therefore, the delay in filing the appeal be condoned and appeal may be admitted for adjudication.

6. Ld. CIT DR for the Revenue opposed these submissions and submitted that substantial opportunity was granted to the assessee. He submitted that the assessee should have been vigilant in filing the appeal.

7. We have heard the rival contentions and perused the material available on record. For the reasons stated in the application and supporting affidavit, we are of the considered view that there was a reasonable cause that prevented the assessee from filing the appeal in time. The delay is hereby, condoned and the appeal of the assessee is admitted for adjudication.

8. Apropos to the grounds of appeal, Ld. Counsel contended that the impugned order is passed *ex-parte* to the assessee. No reasonable opportunity

was granted to the assessee. He further submitted that the assessee has *prima-facie* good case and there is every likelihood of success.

9. On the other hand, Ld. CIT DR opposed these submissions and supported the orders of Ld.CIT(A). He submitted that there is no dispute with regard to the fact that Ld.CIT(A) has dismissed the appeal of the assessee in *limine* without adverting the issue on merit of the case. The relevant contents of the impugned order is reproduced as under for the sake of clarity:-

4. *“In light of the above details of non-compliance and non-pursuance of appeal, reference is made to the following judicial ruling of the Hon'ble Apex Court. In CIT vs. B.N. Bhattacharya (1977) 118 ITR 461(SC), the Hon'ble Supreme Court while dealing with the issue of pursuing of appeal has stated that "preferring an appeal means more than formally filing it but effectively pursuing it". The Hon'ble ITAT, Delhi, in CIT vs. Multiplan India Pvt. Ltd., as reported in 38 ITD 320 (Delhi), when faced with a similar situation of non- pursuing of appeal dismissed the appeal of Revenue. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the following maxim- "vigilantibus non dormientibus jura subveniunt". In view of the above, it is clear that the appellant is not interested in pursuing this appeal. Therefore, the appeal filed by the appellant is dismissed.”*

10. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. In our considered view, Ld.CIT(A) ought to have decided the issue on merit and dismissal of the appeal purely on the basis of non-prosecution, is contrary to the well-settled law. We therefore, set aside the impugned order and restore the grounds of appeal to the file of Ld. CIT(A) to decide the grounds

on merit. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 27th August, 2024.

Sd/-

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI