

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**I.T.A. No.23/Asr/2024
Assessment Year: 2017-18**

Inderjit Singh Brar, Model Town, Phase-II, Bathinda. [PAN:AFBPB3598J] (Appellant)	Vs.	Dy. Commissioner of Income Tax, CPC, Bangalore. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Adv.
Respondent by	Sh. Ravinder Mittal, Sr. DR

Date of Hearing	03.07.2024
Date of Pronouncement	23.08.2024

ORDER

Per: Udayan Das Gupta, JM

This appeal is filed by the assessee against the order of the Ld. CIT (A) passed u/s 250 of the Act 61, for A.Y. 2017-18 vide order dated 18/12/2023, which has arisen out of the order passed by the CPC Bangalore u/s 143(1) of the Act 1961, order dated 05.09.2018.

2. The grounds of appeal taken by the assessee in form no. 36 are as below:

“1. That the Ld. ADDL/JCIT (A) has dismissed the appeal of the assessee, in limine, vide order u/s 250 of the Act Dt.

18.12.2023 & the request of the assessee to condone the delay, in filing the appeal against order u/s 143(1) of the Act Dt. 05.09.2018, without providing any proper opportunity of hearing to the assessee, which is in complete violation of principles of natural justice.

2. That the Ld. ADDL/JCIT (A) has dismissed the appeal of the assessee, in limine, vide order u/s 250 of the Act Dt. 18.12.2023 & the request of the assessee to condone the delay, in filing the appeal against order u/s 143(1) of the Act Dt. 05.09.2018, without providing any proper opportunity of hearing to the assessee, which is in complete violation of principles of natural justice as laid down by the Apex Court in the case of Rajesh Kumar v. Deputy Commissioner of Income-tax [2006] 157 Taxman 168 (SC) & Sahara India (Firm) v. Commissioner of Income-tax, Central-I [2008] 169 Taxman 328 (SC).

3. That the Ld. ADDL/JCIT (A) has erred on facts & laws in confirming the action of the AO of assessing the amount of Rs. 21,09,993/- being the maturity receipts of single premium policy while disallowing the investment of Rs. 15,00,000/- as deduction and rejecting the claim of the assessee to assess Rs. 6,09,993/- as income.

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed of.”

3. The facts of the case are that the assessee has filed his regular return, declaring income of Rs.16,46,080/- which has been assessed u/s 143(1) of the Act by the CPC Bangalore on a total income of Rs.31,25,320/-, resulting from an addition on account of maturity receipts of single premium policy of Life Insurance Corporation amounting to Rs. 14,79,240/-.

4. The assessee has deposited an amount of Rs. 15 lac at the time of insurance against which the maturity receipts of the said policy was Rs.21,09,993/- resulting in an excess receipts of Rs.6,09,993/- which has been declared as income from other sources, in the return of income for the year under appeal.

“Single Premium Rs.15,00,000/-

Maturity Receipt Rs.21,09,993/-

Excess Receipts Rs.6,09,993/- offered for tax in return.”

5. The disclosure of the assessee has been done as per provisions of the CBDT Circular No. 7/2003 dated 05.09.2003 which states as follows:

“10.3 The insurance policies with high premium and minimum risk covers are similar to deposits or bonds. With a view to ensure that such insurance policies are treated at par with other investment schemes, amendments have been made in section 88 and clause (10D) of section 10. The existing clause (10D) of section 10 has been substituted so as to provide that the exemption available under the said clause shall not be

allowed on any sum received under an insurance policy issued on or after the 1st day of April, 2003, in respect of which the premium payable in any of the years during the term of the policy, exceeds twenty per cent of the actual capital sum assured. In view of this, the income accruing on such policies (not including the premium paid by the assessee) shall become taxable. However, any sum received under such policy on the death of a person shall continue to remain exempt. The new provision also provides that the amounts received under sub-section (3) of section 80DD, shall not be exempt under this clause”.

6. The CPC Bangalore has ignored the contents of the said Circular and has considered the total maturity proceeds as part of taxable income by making an addition of Rs.14,79,240/-, because the amount of excess receipt Rs.6,09,993/- was already disclosed by the assessee.

7. The matter was carried in appeal before the first appellate authority and the said appeal has been dismissed by the Id. CIT(A) without considering the merits of the case on the ground that the appeal has been belatedly filed after more than three years.

7.1 As per Id. CIT(A), the due date of filing of appeal was 04.10.2018 and the same has been filed on 17.11.2021 which was delayed by 1101 days, and the

assessee could not prove that he has acted diligently and was not guilty of negligence.

8. Now the assessee is in appeal before the Tribunal on the ground contained in the Memorandum of Appeal. He has also filed a brief synopsis and an affidavit for explaining his case. As per the assessee, the delay is only of 489 days (extending the covid-19 period):

<i>Date of order</i>	05.09.2018
<i>Due date of filing of appeal</i>	04.10.2018
<i>Date of filing of appeal</i>	17.11.2021
<i>Delay in filing the appeal</i>	1101 Days
<i>Period of COVID pandemic excluded by Supreme Court order.</i>	15.03.2020 to 28.02.2022
<i>Period of delay after excluding the period of COVID pandemic [15.03.2020 to 17.11.2021] and the delay remains for the period from 04.10.2018 to 14.03.2020.</i>	1101-612= 489 days

8.1 Further the ld. AR submitted that:

The assessee had moved an application u/s 154 after the order of CPC, Bangalore, on 19.12.2018. The assessee was under bonafides belief that the said rectification would be allowed and, though, order u/s 154 was passed on 08.04.2019 and uploaded on the portal, but neither the counsel nor the assessee was aware of the facts that the application u/s 154 have been rejected. That it is only when the application was filed by the

assessee before the Principal Commissioner of Income Tax, Amritsar for release of jewellery on 10.11.2021, that he was intimated about certain demand, which was pending against him on the basis of above order of 143(1) and thereafter, he immediately filed an appeal before the CIT(A) on 17.11.2021.

iv) The assessee had filed self-declaration and also application for release of jewellery as per page-9 of the Paper Book, which proves the bonafides of the assessee and, thus, it is prayed that the delay in filing the appeal may, please, be condoned. Reliance is being placed on the judgment of Gurfateh Films and Sippy Grewal Productions (P) Ltd. Vs CIT, as reported in (2022) 95 ITR (Trib.) 456 (Asr), wherein, substantial delay has been condoned.

9. The ld. DR relied on the order of the ld. CIT(A), and argued that the assessee could not prove sufficient reason for delay.

10. The ld. AR submitted that excluding the Covid period the extent of delay is only 489 days (and not 1101 days), and considering the fact that the assessee has preferred rectification before the AO on the ground of non-consideration of relevant CBDT Circular, vide rectification request dated 19/12/2018, (which has been rejected without hearing), also proves the bonafide of the assessee, that he has acted diligently and was under the belief that CBDT Circular being binding on the

revenue authorities, the error committed by the AO in course of assessment u/s 143(1) must have been already rectified and demand must have been vacated.

11. We have heard the rival submission and considered the material on record. We find that the assessee has filed a rectification request before the CPC, Bangalore on 19.12.2018, thereafter, the assessee was under a bonafide belief that a suitable relief would be given to the assessee because instruction of CBDT Circular are binding on the AO. It is only when the assessee operated his income tax portal and came to know that the rectification request filed by him has been disposed off without giving any relief and an intimation dated 08.04.2019 has been passed for disposing of such request without considering the binding CBDT Circular, even though, the assessee received no communication w.r.t such intimation. As a result, the assessee was not able to communicate such issue with the counsel of the assessee who was dealing in tax matters of the assessee. Moreover, the assessee was of the presumption that he will be receiving a physical copy of the order for disposing of the rectification request submitted by him.

11.1 Considering the application for condonation of delay, we are of the considered view that leaving aside the period of limitation owing to the Covid pandemic, there is a delay of 489 days in filing of the present appeal, and it is

observed that the delay in filing of the present appeal is due to lack of knowledge and ignorance of the fact by the assessee.

11.2 In this regard the assessee placed reliance on the judgment of Hon'ble Punjab & Haryana High Court in the case of Munjal BCD Centre of Innovation and Entrepreneurship, Ludhiana in CWP No. 21028/2023 wherein, the Hon'ble Court has observed as under:

“8. In view of the above, it is essential that before any action is taken, a communication of the notice must be in terms of the provisions as enumerated herein above. The provisions do not mention of communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a Company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed.”

11.3 We are of the opinion that the delay in filing the appeal is not intentional and there is no neglect on the part of the assessee and there was no intentional delay in this case. As such, in the interest of justice, we remit the matter back to the file of

the ld. CIT(A) / JCIT(A) with a direction to decide the issues contained in Form No. 35 on merits of the case, after considering the CBDT Circular No. 07/2003 dated 05/09/2023 relied upon by the assessee, after allowing a proper opportunity of being heard to the assessee and the assessee is also directed to file all necessary documentary evidences and written submissions for establishing his case before the first appellate authority.

12. In the result, the appeal of the assessee bearing **ITA No. 23/Asr/2024** is allowed for statistical purposes.

Order pronounced in the open court on 23.08.2024

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(UDAYAN DAS GUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

