

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.490/SRT/2024

Assessment Year: (2017-18)

(Hybrid hearing)

Yagnesh Maheshkumar Lakkad 11-A-D, Krishna Nagar Society-2, Near Rander Road, Surat-395009	Vs.	The ITO, Ward - 3(2)(8), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACNPL9295R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Appellant by	Shri P.M. Jagasheth, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	23.07.2024
घोषणा की तारीख /Date of Pronouncement	27.08.2024

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed u/s 250 of the Income-tax Act, 1961 (in short, 'the Act') by the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, "Ld. CIT(A)/NFAC"] dated 24.01.2024 for assessment year (AY) 2017-18.

2. The grounds of appeal raised by the assessee are as under:

"1. On facts and circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax(Appeals) has erred in confirming the action of the Assessing Office in making addition of Rs.10,58,500/- on account of alleged cash payment against credit card bill issued by the SBI Card and Axis Bank Card on various dates treated alleged unexplained money u/s 69A of the Act, 1961 and by not considering the fact that said mount of Rs.10,58,500/- is reimbursement amount in cash received from various followers Shiv Yog on whose behalf subscription amount been paid by the appellant through his credit card and failed to appreciate the submission made thereof.

2. On facts and circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax(Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.22,200/- on account of alleged undisclosed salary and by not considering the fact that the said amount of Rs.22,200/- is allowances towards transportation allowance of Rs.14,400/- and Rs.4,800/- and professional tax on employment of Rs.3,000/- and failed to appreciate the submission made thereof.

3. On facts and circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax(Appeals) has erred in confirming the action of the Assessing Officer in the law by applying retrospectively the provisions of Section 115BBE of the Act and Section 271AAC to the case of appellant being the said provisions in the Law were enacted after event of the cash deposited in credit card by the appellant.

4. On facts and circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax(Appeals) has not offered adequate opportunities to hear the case and passed ex-parte and hence the case may please be set aside and restored back to the CIT(A) or AO.

5. On facts and circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax(Appeals) has erred in confirming the action of the Assessing Officer in initiating penalty u/s 271AAC of the Income Tax Act, 1961.

6. It is therefore prayed that that above addition may please be deleted as learned Members of the Tribunal may deem it proper.

7. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Perusal of record shows that there is delay of 33 days in filing appeal before Tribunal. The assessee has filed an application giving reasons for delay in filing of appeal. In the said application, it has been stated that NFAC passed order on 24.01.2024 and uploaded the same in assessee's PAN login and period of sixty days from the date of order to file appeal before ITAT was on 24.03.2024. The assessee came to know about the order while he visited his authorized representative who advised him to file appeal before ITAT. The Ld. AR submitted that delay of 33 days was neither deliberate nor intentional.

3. On the other hand, the Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue opposed the prayer of the assessee for condonation of delay.

4. We have considered the reasons given by the Ld. AR and perused the accompanied documents along with the application. We find that the delay of 33 days in filing the appeal was not deliberate and intentional on the part of assessee. Moreover, assessee is not going to be benefitted by filing appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, the delay in filing the appeal is condoned and we proceed to decide the case on merit.

5. Facts of the case in brief are that assessee filed his return of income on 25.11.2017 declaring total income at Rs.3,94,250/-. Thereafter, case was selected for limited scrutiny under CASS. The AO issued notice u/s 143(2) on 13.08.2018. The AO found that assessee had made payment of Rs.8,42,000/- and Rs.2,16,500/- in cash against his credit card issued by State Bank of India. Further, there is difference of Rs.22,200/- in the salary received by assessee from his employer. In response to the notices, assessee filed reply but AO found that assessee has not explained the source of cash payment against his credit card bills. The AO again issued show-cause notice. The reply of the assessee was not found satisfactory because assessee has not submitted documentary evidences except names of same parties, registration etc. No

other documents, confirmation for identification of the parties were submitted. The AO stated that assessee has made cash payment of Rs.8,42,000/- and Rs.2,16,500/- totaling to Rs.10,58,500/- against credit card bills of SBI and Axis Bank. The reply of the assessee that he received cash from followers of Shiv Yog Organization was not accepted by AO. Hence, he added Rs.10,58,500/- u/s 69A of the Act. He also added Rs.22,200/- being the difference in the salary shown by the assessee. He also treated the above as unexplained cash credit and taxed the same as per provisions of Section 115BBE of the Act @ 60% and initiated penalty proceedings u/s 271AAC of the Act for concealment of income. Aggrieved, the assessee filed appeal before Ld. CIT(A).

6. In appellate proceedings, the CIT(A) issued several notices of hearing. The assessee did not file any written submission nor evidence nor sought any adjournment in response to the above notices. Thereafter, the CIT(A) has referred to Form-35 and assessment order and observed that there is no material on record to warrant interference in the order of AO. He, therefore, dismissed the appeal of assessee by relying on the decision of ITAT Delhi in case of CIT vs. Multiplan India Ltd., 38 ITD 320 and judgment of Hon'ble Madhya Pradesh High Court in case of Estate of Late Tukoji Rao Holker vs. CWT (1997) reported in 223 ITR 480 (MP). Further aggrieved by the order of Ld. CIT(A), the assessee has filed present appeal before the Tribunal.

7. Before us, Learned Authorized Representative (Ld. AR) of the assessee stated that the first notices were during the Covid-19 period. The Hon'ble Supreme Court has also relaxed the time period during Covid-19 period. The other two notices could not be complied because of old age of the assessee, who is 78 years. The Ld.AR of the assessee prayed that one more opportunity may be given to the assessee in the interest of justice. He promised to submit all necessary details in the fresh appellate proceedings.

8. On the other hand, Ld. Sr. DR for the Revenue supported the order of lower authorities. He stated that assessee has been negligent in pursuing the appeal before CIT(A).

9. We have heard both the parties and perused the materials on record. The Ld. AR has argued that CIT(A) has passed order without giving reasonable and sufficient opportunities of being heard to assessee. The notices were issued during the Covid-19 period and assessee is also very old. The Ld. CIT(A) dismissed appeal by passing a cryptic order without discussing merits of the case. We find that impugned order passed by the Ld. CIT(A) is clearly violative of the express provisions of Section 250(6) of the Act, which provides that the appellate orders of the Ld. CIT(A) have to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decisions. The underlying rationale of the provision is that such orders are subject to further appeal to the appellate Tribunal. Speaking order would obviously enable a party to know precise points decided in his favour or against him. Considering

the facts and circumstances of the case and the submission of Ld. AR for the assessee that the assessment order was confirmed by Ld. CIT(A) in an *ex parte* order, we are of the considered view that the assessee deserves one more opportunity to contest its case on merit. Considering all the facts and in the interest of justice, we set aside the order of Ld. CIT(A) and remit the matter back to the file Ld. CIT(A) with a direction to pass a speaking order in accordance with law after granting adequate opportunity of hearing to assessee. The assessee is directed to be vigilant and to furnish all details and explanation as needed by Ld. CIT(A) by not seeking adjournment without valid reason. With this direction, the grounds of appeal raised by the assessee is treated as allowed for statistical purposes.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced on 27/08/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

सूरत/Surat

दिनांक/ Date: 27/08/2024

DKP Outsourcing Sr.P.S/SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat