

IN THE INCOME TAX APPELLATE TRIBUNAL
"J (SMC)" BENCH, MUMBAI

BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no. 2611/Mum./2024
(Assessment Year : 2017-18)

**Baby Shantilal Jain Legal Heir of
Shantilal Dalichand Jain**

1001 Yashowan Tower, TH Kataria Marg,
Mahim, Mumbai- 400016
PAN-AABPJ9042N

..... Appellant

v/s

Income Tax Officer Ward 16(3)(1)

Aayakar Bhavan, Maharshi Karve Road, New
Marine Lines, Churchgate, Mumbai- 400020

..... Respondent

Assessee by : Shri Radha Halbe
Revenue by : Shri Sridhar G. Menon, Sr. DR

Date of Hearing – 08/08/2024

Date of Order – 28/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the legal heir on behalf of the assessee challenging the impugned order dated 11/03/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Addl./Joint Commissioner of Income Tax (Appeals)-2, Ahmedabad [*"learned Addl./Joint CIT(A)"*], which in turn arose from the intimation dated 15/11/2018 issued under section 143(1) of the Act, for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds: -

"1. In the facts and circumstances of the case and in law, the Ld. CIT Appeal Addl/JCIT(A)- 2, Ahmedabad has erred in not condoning the delay in filing of the appeal occurring on account of bonafide reasons.

2. In the facts and circumstances of the case and in law, the Ld. CIT, Appeals Addl/JCIT(A) -2, Ahmedabad has erred in passing an ex-parte order in violation of principles of natural justice without giving an adequate opportunity of being heard.

3. In the facts and circumstances of the case and in law, the Ld. CIT, Appeals Addl/JCIT(A) -2, Ahmedabad has erred in confirming the addition of Rs. 17,65,988/- without adjudicating the merits of the matter and without considering the fact that the impugned amount of addition was already declared in the return of income and that the tax on it was duly paid.

4. In the facts and circumstances of the case and in law, the Ld. CIT, Appeals Addl/JCIT(A) -2, Ahmedabad has erred in passing an order in the name of the deceased assessee thereby rendering it non est in law."

3. We have considered the submissions of both sides and perused the material available on record. In the present case, at the outset, it is evident that the learned CIT(A) has passed the order dismissing the appeal filed by the assessee on the ground of delay without adjudicating the grounds raised by the assessee on merits against the adjustment made vide intimation issued under section 143(1) of the Act. In the affidavit filed by the legal heir/wife of the assessee, it has been submitted that the assessee was a full-time doctor by profession, however he passed away in June 2020. It is further submitted that prior to the death of her husband, she was never involved in statutory compliances including the filing of income tax returns and consequential notices/intimations. It is submitted that in July 2023 her daughter received an email intimating the existence of some intimation for the assessment year 2017-18, and thereafter she approached the Chartered Accountant to find the veracity of the email. It is submitted that the said Chartered Accountant advised her to

download the intimation from the online portal to verify the correctness of the email. However, due to some technical glitch, she was not able to download the intimation. Thereafter, the technical glitch was brought to the notice of the income tax authorities by filing a grievance on the online portal on 19/07/2023. It is submitted that within a few days that glitch was resolved and she was able to download the intimation. From the perusal of the intimation, it was found that the same is dated 15/11/2018 and was received by her after a lapse of around 1700 days. It is submitted that immediately thereafter, she approached the Chartered Accountant to file the appeal before the learned CIT(A), which was filed on 25/08/2023. Thus, it is submitted that due to the aforesaid reasons, there was a delay of 1720 days in filing the appeal before the learned CIT(A). We find that submissions on similar lines were also made before the learned CIT(A), which form part of the impugned order on pages 2-4.

4. As is evident from the impugned order, the learned CIT(A) did not agree with the submissions made on behalf of the assessee and held that there is no good and justifiable reason for the delay in filing the appeal. Accordingly, the learned CIT(A) dismissed the appeal as not maintainable. During the hearing, no material was brought on record to controvert the submissions made on behalf of the assessee before the learned CIT(A) seeking condonation of delay.

5. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical

considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeals. In view of the facts and circumstances of the present case, as noted above, we are of the considered view that the assessee has proved sufficient cause for not filing the appeal before the learned CIT(A) within the prescribed limitation period. Accordingly, we are of the view that the said delay should be condoned. Hence, we deem it appropriate to set aside the impugned order and restore the matter to the file of the learned CIT(A) for consideration on merits, as per law, after condoning the delay in filing the appeal by the assessee. We order accordingly. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. The assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 28/08/2024

Sd/-

**PADMAVATHY S
ACCOUNTANT MEMBER**

MUMBAI, DATED: 28/08/2024

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Shubham P. Lohar

Assistant Registrar
ITAT, Mumbai