

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.409/Bang/2024
Assessment Years: 2011-12

Venkatesh Sharma, H.No.3-10-143/2, New Jain Temple, Raichur – 584 101. PAN – BHDPS 4392 E	Vs.	The Income Tax Officer, Ward – 4, Raichur. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Monish Sowkar, Advocate
Revenue by	:	Shri Subramanian S, JCIT

Date of hearing	:	19.08.2024
Date of Pronouncement	:	21.08.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 19/10/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1057219421(1) for the assessment year 2011-12.

2. At the outset, it was noticed that there was a delay in filing the appeal by the assessee before the ITAT for 81 days. The assessee filed condonation petition supported by the Affidavit stating that all the notices intimating the date of hearing were issued at the email.id of the Tax Consultant, who lacks the knowledge with respect to the faceless regime, and, therefore, he could not make the necessary compliances before the ITAT. As per the Id. AR the counsel was not aware of even

the ex-parte order being passed by the Id. CIT(A) dated 19/10/2023 dismissing the appeal of the assessee. It is only when the Department initiated recovery proceedings, the assessee came to know about the order passed by the Id. CIT(A). However, in this process, the delay of 81 days has occurred. Now the Id. AR further submitted that the assessee has changed his email.id in Form No.36 so as to ensure necessary compliances for the notices to be issued by the ITAT.

2.1 The Id. AR also contended that the assessee has a strong case in its favour as the ITAT in the own case of the assessee for the assessment year 2010-11 has set aside the issue to the file of the AO in ITA No. 3262/Bang/2018 vide order dated 10/3/2021. The AO in consequence to the direction of the ITAT has accepted the return of income disclosed by the assessee in his order dated 9/3/2023.

2.3 In view of the above, the Id. AR prayed to condone the delay in filing the appeal and set aside the issue to the file of the AO for fresh adjudication as per the provisions of law.

3. On the contrary, the Id. DR did not raise any objections if the delay is condoned, and matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

4. We have heard the rival contentions of both the parties and perused the materials available on record. Considering the reasons for the delay in filing the appeal before the ITAT as discussed above, we condone the delay and proceed to adjudicate the issue on merit.

4.1 On merit, we note that the ITAT in the own case of the assessee involving identical facts and circumstances has set aside the issue to the file of the AO for fresh adjudication in ITA No. 3262//Bang/2018 vide

order dated 10/3/2021 for the assessment year 2010-11. The relevant extract of the order reads as under:

"6. We have heard both the parties and perused the material on record. In this case, the assessee has not produced the requisite evidence to show that he has purchased the shares in the year 1999-2000. Being so, in our opinion, it is proper to remit the issue in dispute to the file of AO with a direction assessee to substantiate its claim that he purchased the shares in 1999-2000 by producing the copies of certificates in physical form and also members register with Shilpa Medicare Ltd. at the relevant point of time supported by requisite statutory forms filed by Shilpa Medicare Ltd. before the concerned Registrar of Companies. With these observations, the issue is restored to the AO for fresh consideration, after affording opportunity of being heard to the assessee."

4.2 In view of the above and after considering the facts in totality, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law. Hence, the ground of appeal filed by the assessee is hereby allowed for statistical purposes.

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

Order pronounced in court on 21st day of August, 2024

Sd/-

Sd/-

(YOGESH KUMAR US)

(WASEEM AHMED)

Judicial Member

Accountant Member

Bangalore

Dated, 21st August, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore