

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA No. 2338/Mum/2024
Assessment Year 2013-14

Manan Jabbar Shaikh, Flat No. 803, E.E. Heights, Above Delhi Darbar Hotel, S.V.Road, Jogeshwari West, Mumbai PAN : ALVPS4316D	vs.	ITO, Ward-31(2)(3), Kautilya Bhavan, BKC, Bandra (E), Mumbai
(Appellant)		(Respondent)

For Assessee :	NONE
For Revenue :	Smt. Mahita Nair, Sr.DR

Date of Hearing :	10-09-2024
Date of Pronouncement :	13-09-2024

ORDER

PER OM PRAKASH KANT, A.M :

This appeal has been preferred by the assessee against the order dated 06-11-2021 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Ld.CIT(A)] for the Assessment Year (AY.) 2013-14, raising following grounds:

"1) That the Ld. Commissioner of Income Tax (Appeals) erred in confirming an addition of Rs. 64,65,651/- and thereby enhancing the income to that extent.

2) *That the Ld. Commissioner of Income Tax (Appeals) erred in passing order u/s. 250 of Income Tax Act without giving proper opportunity of being heard to the appellant.*

3) *That the Ld. Commissioner of Income Tax (Appeals) erred in disregarding the fact that entries cannot only be treated as unexplained investment in bank without considering the nature of the transactions.*

4) *That the Ld. Commissioner of Income Tax (Appeals) erred levying interest and penalties under various sections of the Income Tax Act.*

5) *Your appellant craves leave to add, to alter, to amend and/or alter any of the grounds of appeal before or during the hearing of the appeal.”*

2. Despite notifying for the hearing, neither any one attended nor any application for adjournment was filed on behalf of the assessee, therefore, we were of the opinion that the assessee was not interested in prosecuting this appeal. Accordingly, the appeal was heard *ex-parte* qua the assessee, after taking into consideration the material available on record and arguments on behalf of the Ld. DR.

3. From the records before us, it is seen that this appeal has been filed with a delay of 838 days. In the affidavit filed by the assessee, it is submitted that the assessee was entangled in legal matters relating to his projects for development of slums and, therefore, he could not pay attention to the income tax matters. Relevant part of the affidavit of the assessee is reproduced as under:

1) *Sir, it is to be stated before your honor that my firm and I had been surveyed on 07/10/2013.*

2) *That my projects are all Slum Development Projects.*

3) *All my projects are Slum Projects and are all under various litigation stages. I am required to attend some or the other court matters day-in and day-out.*

4) *Sir, after the survey action by the department on my premises and as I am entangled in legal matters for my projects, I was under much of a stress and psychologically under lot of tension.*

- 5) *Sir, all these facts did not allow me to look after many of the legal issues.*
- 6) *The consultants who were looking after my tax matters also did not co-operate with me properly.*
- 7) *He was handling all the accounting and tax matters, and all credentials of the income tax department were with him.*
- 8) *He did not inform me about any of the cases being instituted against me by the Income Tax Department for any of the years.*
- 9) *It was only when I received certain physical notices that I came to know of the mess created by the consultant.*
- 10) *I therefore plead before your honor to give me an opportunity to present my case before your honor, so that ends of justice could be met.*
- 11) *I therefore plead to condone the delay in filing the appeal before your honor.*

4. We have perused the reasons cited by the assessee for delay in filing the appeal. In our opinion, there is a reasonable cause for non-filing the appeal within the limitation. We also find that the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Mst.Katiji & Ors [167 ITR 471] (SC) has held that – *where substantial justice and technicalities are pitted against each other, then substantial justice should prevail over the technicalities. The filing of the appeal is a statutory right and which should not be denied to the assessee and effort should be made for deciding the matter on merit rather than rejecting the appeal at threshold.* Therefore, respectfully, following the decision of the Hon'ble Supreme Court (supra) referred above, we condone the delay in filing the appeal before the ITAT.

4.1. We find that the assessee was not represented either before the AO or before the Ld.CIT(A). However, the Ld.CIT(A) has decided the appeal, observing as under:

1. *In this Faceless Appeal proceedings, letters/notices were issued on 16.01.2021, 08.07.2021, 27.09.2021 and 27.10.2021.*
2. *However, not a single notice has been even responded to.*
3. *The appellant has not controverted the order against which this appeal has been filed.*
4. *Hence, that order is confirmed.*
5. *In the result, the appeal is dismissed.*

4.2. In our opinion, under the provisions of the Act, the Ld.CIT(A) is required to pass a reasoned and speaking order on the issue in dispute raised in the grounds of appeal by the assessee, even in case of non-compliance on the part of the assessee. Since the Ld.CIT(A) has not decided the issue on merit, therefore, in the interest of substantial justice, we feel it appropriate to restore the matter back to the file of the Ld.CIT(A) for considering the same afresh after affording adequate opportunity of being heard to both the parties. The grounds raised by the assessee are accordingly treated as allowed for statistical purposes.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 13th September, 2024

Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai,

Date : 13-09-2024

TNMM

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai