

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH,
VIRTUAL HEARING AT KOLKATA**

**Before
Shri Rajpal Yadav, Vice President
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No.560/Pat/2022
Assessment Year: 2017-18**

Kanhaiya Kumar **Appellant**
S/o Murari Prasad, Garh Par,
Nawada, Bihar-805110
(PAN: AZJPK9713G)

Vs.

Income Tax officer, Wd-2(5), Biharsharif **Respondent**

Appearances by:

Shri A. K. Rastogi, Sr. Advocate & Sh. Rakesh Kumar, Advocate appeared for Appellant.

Shri Ashwani Kumar, Sr. DR. appeared for Respondent.

Date of concluding the hearing : 11.09.2024

Date of pronouncing the order : 13.09.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed at the instance of the assessee pertaining to the Assessment Year (in short "AY") 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the "Act") by Ld. Commissioner of Income-tax, (Appeals), NFAC, Delhi [in short Ld. "CIT(A)"] dated 22.11.2021 arising out of the assessment order framed u/s. 143(3) of the Act by ITO, Ward-2(5), Biharsharif dated 17.12.2019 .

2. Grounds of appeal raised by the assessee read as under:

- “1. For that the learned Commissioner of Income-tax (Appeals) has erred in passing ex-parte order.*
- 2. For that the appellant is prevented by sufficient and reasonable cause in not making compliance resulting into ex-parte assessment order and ex-parte appellate order.*
- 3. For that the learned Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs.59,62,478/- on account of total deposit in Bank during the period 01/04/2016 to 31/03/2017.*
- 4. For that the learned Commissioner of Income-tax (Appeals) has ignored the fact that the Assessing Officer has expanded the scope of scrutiny without due permission 1 sanction and has wrongly added the total deposit instead of cash deposit during demonetization period which was subject matter of limited scrutiny.*
- 5. For that the learned Commissioner of Income-tax (Appeals) has erred in confirming addition of Rs.59,62,478/- without giving due credit of withdrawals made from the very same bank account which inter alia include payment to suppliers against purchases.*
- 6. For that the sustenance of additions of Rs.53,62,478/- is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.*
- 7. For that the inadvertent mistake of declaring income from business as income from other sources may be directed to be corrected.*
- 8. For that the whole order is bad in fact and law of the case and is fit to be set aside and restored back to the Assessing Officer and the appellant assures all co- operation in future and timely compliance of all the notices of the department.*
- 9. For that other grounds if any shall be urged at the time of hearing of the appeal.”*

3. Registry has informed that the appeal of the assessee is time barred by 307 days. Condonation of delay application is placed in file. The main reason for the delay occurred as expressed by the assessee in his application for condonation of delay is reproduced as under:

“The impugned order was passed on 22/11/2021. It is stated that the registered e- mail in the return of income for the year under consideration was of the appellant's Advocate, Mr. Dharmveer Kumar, Nawada. It is stated that there was no message of uploading of notices/order on the registered mobile of the appellant even in the RoI. It seems that all the

information regarding uploading of notices on e-portal were sent to him. No information was given to the appellant by the Advocate Mr. Kumar and hence compliance could not be made resulting into ex-parte order U/S 144 determining the income at Rs.63,15,338/- by making addition of Rs.59,62,478/- representing total deposit in Bank during the period 01/04/2016 to 31/03/2017 corresponding to A Y 2017 -18. The Advocate concern has uploaded the Memo of Appeal by giving some e mail address which does not belong to the appellant. The registered mobile number in Form 35 was that of the appellant. However, no message of uploading of notices of hearing of appeal was received on the registered mobile number. It seems that all the notices were issued on the registered e mail id and unfortunately no information was received by the appellant resulting into ex-parte order by NFAC, Delhi confirming the addition made by the Assessing Officer.

As a matter of fact, the Mr. Kumar has not given any information about the ex-parte order of CIT(A) and the appellant came to know about the impugned order of Ld. CIT(A) in the beginning of November, 2022 when there has been demand for payment of tax by the jurisdictional Assessing Officer and hence the appellant approached another Chartered Accountant namely Gaurav Kumar, Patna who has retrieved the order from the e-portal and hence the appellant is filing this belated appeal along with condonation petition with a prayer that the delay in filing of appeal may kindly be condoned.

Further, it is relevant to mention that the assessment and the appellate proceedings were initiated and culminated during the outbreak of pandemic COVID-19 consequential lockdown from time to time as per the notifications/orders of Govt. India and Govt. of Bihar.

Your honour's kind attention is invited to the order of the Hon'ble Supreme Court dated 23.03.2020 in the case of In re: Cognizance for Extension of Limitation, Suo Moto Writ (Civil) No. 3 of 2020, has been pleased to direct that the period of imitation shall be extended w.e.f. 15.03.2020 till further orders, in all the proceedings under any central or state law, either general or special law. The Hon'ble Supreme Court vide order dated 08.03.2021 passed in the same case of In re: Cognizance for Extension of Limitation, Suo Moto Writ (Civil) No.3 of 2020, has been pleased to say that the period from 15.03.2020 to 14.03.2021 shall be excluded for counting any limitation period. Further again vide order dated 27.04.2021 in the said matter, the Hon'ble Supreme Court has directed that the period from 14.03.2021 till further orders shall not be counted in limitation period.

Your honour's kind attention is also invited to circular no.10/2021 dated 25/05/2021 wherein the CBDT has categorically held, after referring to the various orders/judgments of the Hon'ble Supreme Court (referred to above), "Thus, for the purposes of counting the period(s) of limitation for filing of appeals before CIT (Appeals) under the Act, the tax payer is entitled to a relaxation which is more beneficial to him and hence the said limitation stands extended till further orders as ordered by the Hon'ble

Supreme Court in *Suo Motu writ petition (civil) No.312020 by order dated 27 April 2021*". The order of the Hon'ble Supreme Court relied upon in the said circular is quoted below:

IN THE SUPREME COURT OF INDIA,
CIVIL ORIGINAL JURISDICTION
MISCELLANEOUS APPLICATION NO. 21 OF 2022
IN
MISCELLANEOUS APPLICATION NO. 665 OF 2021
IN
SUO MOTU WRIT PETITION (C) NO.3 OF 2020
IN
RE: COGNIZANCE FOR EXTENSION OF LIMITATION
WITH
MISCELLANEOUS APPLICATION NO.29 OF 2022
IN
MISCELLANEOUS APPLICATION NO. 665 OF 2021
IN
SUO MOTU WRIT PETITION (C) NO.3 OF 2020

"It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the period prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. "

"III. In cases where the limited would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. [Order dated 10.01.2022]

In light of the aforesaid declaration of law of the Hon'ble Supreme Court duly followed by the CBDT in the circular referred to above, the delay

during the period from 22/11/2021 to 28/02/2022 and further period of 90 days i.e. from 01/03/2022 to 29/05/2022 may kindly be excluded for the purposes of counting of limitation.

The petitioner is filing the present appeal soon upon being aware of the adverse order of CIT(A) recently in the beginning of November, 2022, it is respectfully submitted that the delay may kindly be condoned and the appeal may kindly be heard on merits as the petitioner is prevented by sufficient and reasonable cause.”

Though Ld. DR opposed the condonation of delay, we find the reason given by the assessee to be reasonable and, therefore, in the interest of justice condone the delay of 307 days and admit the appeal for adjudication.

4. At the time of hearing before us, Ld. Counsel for the assessee submitted that the assessee was not granted fair opportunity of hearing by the Ld. CIT(A) before framing an *ex parte* order and prayed to set aside the order of the Ld. CIT(A) and restore the matter to his file for afresh adjudication.

5. We have heard the rival submissions and perused the material available on record. We notice that the Ld. CIT(A) has afforded only five opportunities to the assessee i.e. on 17.01.2019, 15.09.2019, 15.11.2019, 06.12.2019 and 11.12.2019 but the assessee did not respond to the same. Ld. CIT(A) dismissed the appeal *ex parte* on account of non appearance without going into the merits of the case and failed to pass a speaking order as contemplated u/s. 250(6) of the Act. Considering the facts and circumstances of the case and in the interest of justice and fair play, we set aside the impugned order of the Ld. CIT(A) and restore the matter to the file of Ld. CIT(A) for fresh adjudication for which reasonable opportunity of being heard be provided to the assessee. The assessee is also given liberty to file necessary documents in support of his contention

before the Ld. CIT(A), who after considering the same will pass a speaking order. Assessee is also directed not to take any adjournment without the reasonable cause.

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

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

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Dr. Manish Borad)
Accountant Member

Dated : 13.09.2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – Shri Kanhaiya Kumar**
2. **Respondent – ITO, Ward-2(5), Patna**
3. CIT(A), NFAC, Delhi
4. Pr. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata