

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA NO. 3591/MUM/2024 : A.Y : 2018-19

Ramita Shah
Alpa Apartment, Sir Pochkhanwala
Road, Mumbai 400 030.
PAN : AAEPR0264M (Appellant)

Vs. Asstt. Commissioner of
Income Tax, Mumbai.
(Respondent)

**Appellant by : Shri Bhupendra Shah
Respondent by : Smt. Sanyogita Nagpal**

**Date of Hearing : 02/09/2024
Date of Pronouncement : 17/09/2024**

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2018-19. This appeal is related to the addition of Rs.30.22 crores made by the AO u/s 69A of the Act.

2. The appeal has been filed by the assessee belatedly with a delay of 1167 days. The assessee had filed appeal before Ld CIT(A) challenging the addition made by the AO in the assessment order dated 04-03-2021. In the mean time, the assessee also filed a grievance petition dated 26.5.2022 against the assessment order passed by the AO before the Delhi Samadhan Faceless Assessment Committee reporting that the assessment should be treated as High Pitched scrutiny assessment. Consequently, the demand was stayed and the local PCCIT directed the CIT(A), NFAC to dispose of the appeal on priority basis. The Ld CIT(A),

accordingly, disposed of the appeal on 27-09-2022 with the direction to file details and certificate of auditor before the JAO, i.e., the Ld CIT(A) restored the matter back to the file of the AO. Even though the details were filed before the JAO from 28-09-2022 to 02-01-2024, yet the JAO passed the consequential assessment order confirming the addition in his order passed on 29-05-2024. It is stated that the impugned addition has been made on account of improper appreciation of the facts and the assessee was under the bonafide belief that the JAO will delete the addition by correctly appreciating the facts. Since the JAO sustained the addition, the assessee was advised to file appeal against the order passed by Ld CIT(A) and the above mentioned events resulted in a delay of 1167 days. Accordingly, it was submitted that the delay in filing appeal was not intentional and accordingly prayed that the delay may be condoned. The Ld A.R, during the course of hearing, also explained the nature of addition.

3. We heard Ld D.R on this preliminary issue. We notice that the revenue has accepted the addition made in the hands of the assessee as a case of High Pitched assessment. According to Ld A.R, the assessee was running a proprietary concern and maintaining business books. The assessee was also maintaining personal books of accounts for other activities. In the preceding year, the Balance Sheet of the proprietary concern was incorporated in the return of income. During the current year, the proprietary concern was converted into Partnership firm and hence there was no business activity. However, the auditor erroneously filled the details of Personal balance Sheet in the schedule mentioned for balance sheet of business in the current year ROI. Noticing that the capital balance shown in the preceding year did not tally with the current year and further noticing that there is huge increase in the Opening balance of capital, the AO made the addition of the difference in the opening balance. The Ld A.R submitted that the AO has compared the capital balance available in the closed business concern with the capital balance available in the Personal books and accordingly added the

difference in the capital account balance. Since it was erroneous appreciation of facts, the assessee has followed the matter before the AO in the set aside proceedings. Considering the nature of addition, the assessee was under bonafide belief that she will get proper relief before the AO, which ultimately did not happen. Accordingly, the assessee has decided to pursue the matter before the ITAT and accordingly, she has filed appeal before the Tribunal.

4. Thus, we notice that the assessee was pursuing the matter before the AO in the set aside proceedings with the bonafide belief that she will get relief. Thus, we notice that the assessee was not keeping idle, but pursuing the matter before the tax authorities, probably under the advice of the tax consultants. Considering the peculiar facts prevailing in this case, we are of the view that there was sufficient cause for the assessee in filing this appeal belatedly. Accordingly, we condone the delay and admit the appeal for hearing.

5. We heard the parties and perused the record. The nature of addition and its back ground has been discussed by us in an earlier paragraph. According to the assessee, the capital balance of the business concern (since closed) has been compared by the AO with the Capital balance available in the Personal books. If that is so, then the action of the AO may not be right.

6. We notice that the Ld CIT(A) has set aside the matter to the file of the AO, which he is not entitled to do. It is mandatory for the Ld CIT(A) to decide the issues on merits. If any new documents are required to be considered by him, then he has to confront it with the AO by calling for a remand report. Accordingly, on this reason alone, the order passed by Ld CIT(A) is liable to be set aside.

7. Accordingly, we set aside the order passed by the first appellate authority and restore all the issues to his file with the direction to decide the issue on merits. If required, the Ld CIT(A) may call for a remand report from the AO on the documents furnished by the assessee and

further the assessee should be provided with opportunity to reply to the remand report. Thereafter, the Ld CIT(A) may decide the issue in accordance with the law and render justice.

8. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 17th September, 2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/09/2024

TNMM/SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai