

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.284/Ind/2024
(Assessment Year: 2017-2018)

Shri Satyendra Kumar Vyas, B-143, Sant Asaram Nagar, Phase-1, Baghmugaliya, Bhopal	Vs.	CIT (A), NFAC, Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: BCJPK2848G		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	24.09.2024	
Date of Pronouncement	25.09.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 07.02.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi for the Assessment Year 2017-2018.

2. The assessee has raised following grounds of appeal:

1. For that the learned Commissioner of Income Tax (Appeals) (for brevity "CIT(A) has caused great hardship and aggrievance to the Appellant by ignoring the reasons mentioned in the application for condonation of delay and thus rejecting the appeal as barred by limitation.

2. For that the learned CIT(A) committed grave error by ignoring the Principles of Natural Justice by not providing an opportunity of being heard to the Appellant before rejecting his application for condonation of delay and thus dismissing the said appeal as barred by limitation.

3. For that the learned CIT(A) erred in law by issuing hearing notices to the appellant asking for written submission to grounds of appeal and afterwards dismissing the appeal as barred by limitation.

4. For that the learned CIT(A) committed manifest illegality by dismissing the said appeal without providing an opportunity and without following proper course of conduct and merely based on surmises and conjectures and thus, the impugned dismissal of the said appeal deserves to be quashed."

3. At the time of hearing Ld. AR of the assessee has submitted that CIT(A) has dismissed the appeal of the assessee as not maintainable being barred by limitation after declined to condone the delay. The Ld. AR has further submitted that the CIT(A) has reproduced the reasons explained by the assessee as cause of delay in filing the appeal in para 2 of the impugned order however, except one notice the CIT(A) has not given an opportunity of hearing to explain the cause of delay in filing the appeal. He has contended that the A.O passed ex-parte order on 28.12.2019 against which the appeal before CIT(A) was filed on 29.12.2021 when the assessee

received the demand notice from the A.O and realized that the appeal against the assessment order has not been filed. He has pointed out that the assessee was under the bonafide belief that the authorized representative of the assessee took steps for filing the appeal but due to the covid pandemic the appeal could not be filed. He has filed an affidavit of the assessee dated 09.09.2024 and submitted that the assessee has explained the reasons in the affidavit which may be considered for condonation of delay in filing the appeal before CIT(A). Since the appeal of the assessee has not been decided on merits therefore, the matter may be remanded for fresh adjudication.

4. On the other hand Ld. Departmental Representative has relied upon the impugned order of the CIT(A) and submitted that the assessee has not explained the delay even before March, 2020 when due to covid pandemic there was a lock down and limitation was extended by Hon'ble Supreme Court.

5. We have considered rival submissions and carefully perused the impugned order of the CIT(A). The CIT(A) has reproduced the

reasons explained by the assessee in the application for condonation of delay in para 2 of the impugned order as under:

"2. In this case as per the facts recorded in the Form 35 the order dated 28.12.2019 was received by the appellant on 28.12.2019. As such the appeal filed by the appellant on 29.12.2021 is a delayed appeal. The appeal is not filed in time and the appellant, along with Form 35, filed a letter seeking condonation of delay which reads as follows"

"It is pleaded that the authorised representative of the appellant failed to file an appeal against the assessment order passed by the learned AO within the time limit prescribed under section 249 of the Income Tax Act. Meanwhile the appellant was of the opinion that his case was being duly handled with due diligence and care by his authorized representative. It was only when the penalty notices were furnished to him, he came to realize that no appropriate response was fled during the assessment proceedings and no appeal was filed against the same. Therefore, the appellant craves to request the learned CIT(A) to condone the delay and serve justice upon the appellant."

2.1 It can be noted from the above that the lone reason cited for seeking condonation of delay is that the assessment proceedings were being looked after by the authorised representative of the company and that the management was solely dependent upon him for the same but unfortunately the authorised representative ditched the assessee who trusted on him. It is further submitted that the authorised representative kept the assessee in dark and that he is not aware about the mishandling of assessment proceedings.

But for this mere statement, the petition seeking condonation of delay in filing the appeal does not spell out the name of the authorised representative nor any documentary evidence is attached to substantiate the claim made. Before adverting further, it is pertinent to take a note of the appellant's conduct during assessment proceedings before the AO. It is noted that even then there is consistent failure on part of the assessee in matter of compliance to the statutory notices issued by the AO, as apparent from the order of the AO, who has also levied penalty for being non-compliant despite several opportunities, as is evident from the assessment order, relevant portion extracted here below

"The assessee has filed his return of Income for the AY 2017-18 on 29/07/2017 showing total income at Rs. 8,50,200/- after claiming deduction of Rs. 99,966/- under Chapter-VI-A of the Act. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'Act') at the same income. Thereafter, case was selected

for 'Limited Scrutiny through 'CASS" on the reasons of cash deposits during the year and cash deposits during the demonetization period and accordingly notice u/s 143(2) of the 'Act' dated 27/09/2018 was issued and fixing the date of hearing on 15/10/2018 which were properly served upon the assessee. Due to change of incumbent notice u/s 129 dated 11/07/2019 of the IT Act was issued to the assessee. Notice u/s 142(1) dated 09/08/2019 along with specific questionnaire was issued fixing the date of compliance on 26/09/2019 and properly served upon to the assessee. Further, a reminder letter regarding non compliance of query raised u/s 142(1) was issued to the assessee on 08/11/2019 to file his response to this office by 14/11/2019 Despite repeated opportunities being provided, the assessee failed to avail any of the opportunities. 2. Further, a final opportunity of being heard was given by issuing a Show Cause Notice u/s 144 of I.T. Act dated 15/12/2019 proposing ex-parte assessment fixing the date of hearing by 18/12/2019 which was also served upon the assessee. However, the assessee did not comply with the directions of the notice so issued. This office was left with no other alternative but to complete the assessment u/s 144 of the Income Tax Act, 1961. Accordingly, the assessment proceeding is completed ex-parte u/s 144 of the IT Act, considering the information available with this office on record. 3. The assessee failed to make compliance in response to the notices issued u/s 143(2), u/s 129, u/s 142(1), non-compliance of notice u/s 142(1) and show cause notice u/s 144 of I.T. Act. It is evident from the date wise chronology of the notices issued that the assessee has been provided repeated opportunities to file the submission and to produce the books of account in support of his income along with the supporting documentary evidences regarding the source of cash deposit made during the year".

Condonation of delay necessarily depends upon the sufficiency of the cause shown and the degree of acceptability of the explanation. There is a distinction between an 'explanation' and an 'excuse' An 'explanation' involves putting forth all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action.

Application for condonation of delay in filing the appeal must not only give the reasons for the delay, but also substantiate the same with necessary evidences along with Form No. 35. Therefore, merely basis one line application so filed by the assessee which is not supported by any

documentary proof of the claim thus remain unsubstantiated I am unable to accede to the request of the assessee for condoning the delay. The delay cannot be condoned merely because the assessee's case calls for sympathy or merely out of benevolence For the exercise of discretion in condoning the delay, it must be established beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence on its part. Therefore, it is incumbent on part of the assessee to explain with all necessary proof, the circumstances which prevented it from filing the appeal in time. A perusal of the contents of the letter seeking condonation of delay in filing the appeal as reproduced above and upon noting the assessee's conduct during proceedings before the AO as also extracted above, it is clear that the appellant has been lackadalsical in its approach and in a nonchalant manner it is attempting to seek condonation of delay.

2.2 Therefore, in the facts and circumstances of the case, I am of the considered view that there is clearly a failure on part of the assessee in filing the appeal in time and lack of diligence and inaction on its part which could have been avoided by the assessee if it had exercised due care and attention.

3. In the result, the appeal filed by the assessee is dismissed as barred by limitation”.

5.1 The CIT(A) was not satisfied with the sufficiency of the reasons of the cause as explained by the assessee and therefore declined to condone the delay in filing the appeal. CIT(A) referred to the assessment order and observed that even before the A.O there was no compliance on behalf of the assessee to the notice issued u/s 142(1) of the Act and consequently the assessment was framed as best judgment assessment u/s 144 of the Act. Thus due to the non-cooperative conduct of the assessee CIT(A) declined to condone the delay. From the perusal of the impugned order we find

that CIT(A) even not mentioned about any opportunity of hearing to the assessee before dismissing the appeal being barred by limitation. Therefore, we are of the considered opinion that the impugned order passed by CIT(A) without giving an appropriate opportunity of hearing to the assessee to explain the cause of delay is in violation of principal of natural justice. The assessee has also now filed an affidavit in support of the cause of delay explained. Accordingly, in the facts and circumstances of the case and in the interest of justice the impugned order of CIT(A) is set aside and the matter is remanded to the record of CIT(A) for fresh adjudication after giving an opportunity of hearing to the assessee.

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

Order pronounced in the open court on 25.09.2024.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 25.09.2024
Dev/Sr. PS

Sd/-

(VIJAY PAL RAO)
Judicial Member

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore