

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1705/PUN/2024

निर्धारण वर्ष / Assessment Year : 2010-11

Shivratan Motilalji Rathi HUF, Rathi Rathi and Co., 501-504, Akshay Landmarks, Opp. Pu La Garden, Sinhagad Road, Pune 411 030 Maharashtra PaN : AAEHR5318G	Vs.	ITO, Ward-1, Jalna
Appellant		Respondent

Assessee by : Shri Smruti Sabnis
Revenue by : Shri B.S. Rajpurohit

Date of hearing : 26.09.2024
Date of pronouncement : 26.09.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre, Delhi dated 27.06.2024 passed u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment year 2010-11.

2. Briefly, the facts of the case are that the appellant is an HUF and no regular return of income under the provisions of section 139(1) was filed for the A.Y. 2010-11. During the course of assessment proceedings

in the case of Mr. Deepak Kundanmal Rathi it was found that the appellant along with said Mr. Deepak Kundanmal Rathi constructed a residential apartment consisting of 13 flats and hospital building at Municipal No.,1-28-76, Survey No.4076, Mantha Road, Jalna. Based on this information, the Assessing Officer (AO) formed an opinion that income escaped assessment to tax since the appellant had not filed the return of income. Accordingly, notice u/s.148 was issued to the appellant on 11.03.2013 which was served on 14.03.2013. The appellant neither complied with notice u/s.148 nor notice u/s.142(1). In the circumstances, the AO vide order dated 27.02.2015 was constrained to pass best judgment assessment u/s.144 r.w.s.147 of the Act by bringing to tax his share of investment in the cost of construction of the said buildings of Rs.22,14,585/-.

3. Being aggrieved by the above assessment, an appeal was filed before the NFAC with a delay of 562 days. The NFAC placing reliance on the judgment of Hon'ble Supreme Court in the case of *Pathapati Subba Reddy (Died) Vs. The Special Deputy Collector (LA) Special Leave Petition (Civil) Appeal No.31248/2018, dated 08.04.2024* refused to condone the delay, accordingly dismissed the appeal *in limine* on grounds of delay.

4. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

5. We heard the rival submissions and perused the material on record. The solitary issue in the present appeal relates to whether the NFAC was justified in refusing to condone the delay of 562 days. The explanation given for delay in filing the appeal before the NFAC is

extracted on page 2 of the impugned order. It was stated that the delay had occurred due to lack of coordination among the family members of the HUF and unawareness about the time limit specified for filing of appeals. The NFAC however relying on the judgment of Hon'ble Supreme Court in the case of *Pathapati Subba Reddy (supra)* refused to condone the delay. We had carefully gone through the order of the NFAC and find that the Hon'ble Supreme Court laid down that in the absence of 'sufficient cause' for delay, the delay need not be condoned. However, the NFAC had never dealt with the issue whether the explanation tendered by the appellant HUF tantamount to 'sufficient cause' or not, merely gave a bald finding that there was no 'reasonable cause' for filing the appeal late. In the absence of any material to disbelieve the explanation, in our considered opinion, the NFAC ought to have condoned the delay and decided the appeal on merit. Accordingly, we set-aside the order of NFAC and restore the matter back to the file of NFAC to decide the issue in appeal on merits after affording an opportunity of being heard to the appellant HUF.

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

Order pronounced on this 26th day of September, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th September, 2024.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.