

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1586/PUN/2024

निर्धारण वर्ष / Assessment Year : 2012-13

Nilesh Himmatrao Patil, 301, Ujjwal Liberty, Lane No.30/31, Ganesh Nagar, Dhayari B.O., Pune 411 041 Maharashtra PAN : ARDPP6570E	Vs.	ITO, Ward-6(2), Pune
Appellant		Respondent

Assessee by : Shri Suhas P. Bora
Revenue by : Shri B.S. Rajpurohit

Date of hearing : 07.10.2024
Date of pronouncement : 09.10.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the appellant directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 03.04.2024 for the assessment year 2012-13.

2. At the outset, I find the appeal is time barred by limitation by 65 days before the Tribunal. The appellant had filed an affidavit praying for condonation of delay on the ground that the appellant was unaware of the *ex parte* proceedings before CIT(Appeal). It had come to his knowledge only when the recovery proceedings were initiated. Further, the notices and letters were served on the e-mail id of the former tax consultant. He was under the bonafide belief that the former tax consultant complied with all the notices. However, it was found that the former tax consultant did not take any action. After receiving the outstanding demand letter, the appellant thereafter approached another Chartered Accountant who took

steps in filing the required details before the CIT(A)/NFAC. Thus, there was reasonable cause for not preferring the appeal within the stipulated time.

3. I have gone through the averments made in the affidavit filed by the appellant. There was no material on record to disbelieve the aforementioned averments of the appellant. In the circumstances, I am of the view that this is a fit case to condone the delay. I therefore condone the delay of 65 days and admit the appeal for adjudication.

4. Brief facts of the case are that the appellant is an individual, no regular return of income for the A.Y. 2012-13 under the provisions of section 139(1) was filed. Based on the information in the NMS data that the appellant made cash deposit of Rs.20,80,000/- and time deposit of Rs.26,99,000/- with Vishweshwar Sahakari Bank Ltd. the Assessing Officer formed an opinion that income escaped assessment to tax. Accordingly, the case of the appellant was reopened u/s.147 of the Act and notice u/s.148 was issued to the appellant on 30.03.2019. Notice u/s.142(1) was issued to the appellant on 19.08.2019. Thereafter, show cause notice dated 08.11.2019 was issued to the appellant. The appellant neither complied with notice u/s.148 nor u/s.142(1). In the absence of any compliance from the side of appellant, the Assessing Officer issued summons u/s.133(6) to the Vishweshwar Sahakari Bank, Pune calling for the bank statement in respect of the transactions entered into by the appellant, reflected during the previous year relevant to the assessment year under consideration. Based on the information provided by the said bank, the AO vide order dated 29.11.2019 passed u/s.144 r.w.s.147 of the Act completed the assessment, making addition of Rs.47,79,000/- u/s.69A as unexplained money.

5. Being aggrieved by the above assessment order, an appeal was filed before the NFAC, who vide impugned order dismissed the appeal on the

ground that the appellant had filed the appeal against the notice for outstanding demand and has requested for condonation of delay. As the notice for outstanding demand against which the appeal is filed is not an order to be appealed against, the question of delay in filing of appeal does not arise. As such the delay is not condoned.

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

7. I heard the rival submissions and perused the material on record. I had carefully perused the impugned order passed by the NFAC. The NFAC had merely dismissed the appeal on the ground that the appellant had not enclosed the assessment order but recovery demand notice issued by the AO. In my considered opinion, the NFAC ought to have notified this defect in filing the appeal and given reasonable time to the appellant to cure the defect. The approach adopted by the NFAC in the present case is hyper technical. Therefore, in the interest of justice, the matter is remitted back to the file of NFAC for *denovo* disposal of the appeal on merits after affording reasonable opportunity of hearing in accordance with law. I order accordingly.

8. In the result, the appeal filed by the appellant trust stands partly allowed for statistical purposes.

Order pronounced on this 09th day of October, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 09th October, 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.