

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4396 & 4416/Mum/2024
Assessment Year: 2012-13

Ivan Santosh Fernandes, Mumbai C/o C.A. Himanshu Gandhi 16 th Floor, D Wing Trade World Building Kamala Mills Compound Lower Parel Maharashtra - 400013 [PAN: AAHPF0448A]	Vs	Deputy Commissioner of Income Tax, Circle-22(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Mr. Himanshu Gandhi, A/R
Revenue by :	Shri Krishna Kumar, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 15/10/2024
घोषणा की तारीख /Date of Pronouncement: 15/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 4396/Mum/2024, is preferred by the assessee against the order dated 20/08/2024 by NFAC, Delhi, pertaining to AY 2012-13 and ITA No. 4416/Mum/2024 is the appeal preferred against the levy of penalty for AY 2012-13.

2. Since the issues involved in both the appeals are interlinked, they are decided by this common order for the sake of convenience and brevity.

3. Briefly stated the facts of the case are that the assessee filed original return of income on 29/09/2012 declaring total income at Rs. 28,49,620/-. The return of income was processed u/s 143(3) of the Act

at total income of Rs.48,73,430/-. Thereafter vide notice dated 30/03/2019, the assessment was reopened and the re-assessment was completed at Rs.2,46,88,933/-.

4. The assessee challenged the assessment before the Id. CIT(A) but the Id. CIT(A) was of the firm belief that the assessee has filed the appeal beyond the period of limitation prescribed under the Act. The relevant findings of the Id. CIT(A) read as under:-

“5. FINDINGS & DECISIONS

1. I have gone through the Assessment Order and grounds of appeal filed by the appellant. It is observed that the date of service of notice of demand as declared by the appellant in Form 35 is 7 December 2021 and the appellant has filed appeal on 13 December 2021. However, the actual date mentioned on the demand notice is 10 December 2019. This means the appellant is claiming that he received demand notice after 2 years of completion of the assessment proceedings. The notice of demand was bearing number as ITBA/COM/F/17/2019-20/1022040309(1) and it bears digital signature of the assessing officer. The appellant has also filed another appeal pertaining to penalty for same assessment year the dates mentioned in Form 35 of penalty appeal are as under:

Date of Order	Date of notice of demand	Date of notice of demand mentioned in Form 35	Date of filing Form 35
26-Oct-21	26-Oct-21	26-Oct-21	26-Nov-21

This indicates that the appellant has filed quantum appeal after filing penalty appeal. It is also observed in the penalty order that the appellant had filed reply dated 10 August 2021, which means he was aware about disputed quantum of income tax for which he had not filed appeal.

Moreover, on perusal of the assessment order, it is observed that the appellant had raised objection for re-assessment and the Ld. AO vide letter dated 14 October 2019 had addressed said objections as well. This indicates the appellant was very well aware of the ongoing assessment proceedings but had obtained for non co-operation with assessment proceedings.

However, in Form 35 the appellant has deliberately mentioned dated of receipt of notice of demand as 7 December 2021. The appellant has also not filed any evidence (screenshot or etc.) to prove that he had not received the demand notice electronically on his email ID or Online Income Tax Portal.

It is also pertinent to mention that the appellant has not filed any plea for condonation of delay to office of CIT(A).

2. Condonation of delay being a discretionary power available to appellate authority, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being

immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable.

3. Thus, belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day.

4. The condonation of delay cannot be a routine affair. A person, who is not vigilant, is not entitled for the relief after a prolonged period.

5. In other words, for condonation of delay, the reasons adduced must be properly pleaded, convincing and acceptable and explanation should be offered for condonation of the delay. Unless proper explanation is offered, the Appellate authority could not exercise its discretion in the proper perspective to advance substantial justice.

6. In the impugned appeal the appellant has merely casually acted to file appeal after 2 years of date of notice of demand and that too without any plea to condone the delay. Thus, the same is not found to be tenable.

7. Since the appeal filing is time barred and in absence of any justified reason/explanation the same is not maintainable ab initio.

8. Accordingly, the appeal of the appellant is disposed on merits and based on information/documents available on records."

5. We have given a thoughtful consideration to the decision of the Id. CIT(A). We are pained to find that instead of deciding the appeal on merits of the case, the Id. CIT(A) has dismissed the appeal *in limine* without even realizing that the entire period of delay was Covid period which had prompted the Hon'ble Supreme Court to *suo moto* extend the period of limitation across the country. Therefore, we are of the considered view that the Id. CIT(A) should have condoned the delay being Covid period and decided the issues on merits of the case.

6. Therefore, in the interest of justice and fair play, we restore the issues to the file of the Id. CIT(A) to be decided afresh after affording adequate and reasonable opportunity of being heard to the assessee.

7. Since we have restored the quantum issues to the file of the Id. CIT(A), we accordingly direct the Id. CIT(A) to decide the issue of levy of penalty u/s 271(1)(c) of the Act after deciding the quantum appeal.

8. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the Court on 15th October, 2024 at Mumbai.

Sd/-

**(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 15/10/2024

SC S.P.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai