

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**I.T.A No. 3220/Mum/2024
(Assessment Year 2010-11)**

Rajkumar Lahori Shah Sahani C-1503, Royal Classic, New Link Road, Andheri West, Mumbai-400 053 PAN : AKGPS2334H	vs	ITO 24(3)(5), Mumbai 509, Piramal Chambers, Lalbaug, Mumbai-400 012
APPELLANT		RESPONDENT

Assessee by : Shri Purav Gindra
Respondent by : Shri Sunny Kachhwaha - SR DR

Date of hearing : 07/10/2024
Date of pronouncement : 21/10/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2010-11, date of order 13.05.2024. The impugned order is emanated from the order of the Learned Income-tax Officer-24(3)(5), Mumbai, passed under section 144 of the Act, date of order 26/12/2017.

2. The assessee has taken the following grounds of appeal:-

“1) Ground No. 1: Reopening u/s Invalid

+Ld. CIT(Appeals) erred in confirming the action of the Ld. A.D. in reopening the assessment of the Appellant by issuance of the notice under section 148 of the Act without recording valid and proper reasons to show that any income chargeable to tax has escaped assessment. Hence, the notice under section 148 and subsequent assessment order passed under section 144 r.w.s. 147 is bad in law and the same may be quashed and set aside.

2) Ground No. 2: Reopening Invalid on account of violation of provision u/s 151

On the given facts, circumstances and judicial pronouncements; Ld. Assessing Officer has erred in passing the order without following proper procedure u/s 151 and hence, the assessment order passed u/s 143(3) rws. 147 of the Act is bad in law and erroneous in facts and liable to be quashed.

3) Ground No. 3: Denial of Condonation of Delay in Appeal

On the given facts, circumstances and judicial pronouncements, CIT (Appeals) erred in not accepting the appeal filed and not considering the condonation of delay without considering the reasons submitted and providing opportunity of hearing. Thereby the delay be condoned while filing the appeal before CIT(Appeals) and appeal be considered & allowed on merits.

4) Ground No. 4: Violation of Natural Justice

On facts and circumstances, Ld. CIT(A) has erred in passing the order without providing proper opportunity of hearing to the appellant. Such additions are bad in law and liable to be deleted as order is passed without opportunity of being heard and violating the principles of natural justice.

5) Ground No. 5: Addition u/s 69B of Rs. 1,00,00,000/-

On facts and circumstances, Ld. CIT(A) has erred in confirming action of the Ld. Assessing Officer in making addition u/s 69B as unexplained investments of Rs. 1,00,00,000/- without considering the submissions made by the appellant. Such disallowance is bad in law and liable to be deleted.

6) Ground No. 6: Denial of benefits of deduction u/s 80 & exemption u/s 10 and u/s 17

On facts and circumstances, Ld. CIT(A) has erred in not allowing benefit of deduction u/s 80 and exemption u/s 10 & u/s 17 of Rs. Rs.2,41,828/- while calculating net total taxable income. Such addition is bad in law & erroneous in facts and liable to be allowed.

7) Ground No. 7: Denial of TDS Credit of Rs. 61,725/-

On facts and circumstances, Ld. CIT(A) has erred in not allowing TDS credit of Rs. 61,725/- while calculating taxable payable. Such denial of TDS credit is bad in law & erroneous in facts and liable to be allowed.

The Appellant craves leave to add, alter, rescind or amend any of the above grounds of appeal."

3. The brief facts of the case is that the assessment was completed under section 144 with an addition of Rs.1,37,250/-, the interest from Bank of Maharashtra received during the impugned assessment year was not disclosed in the return of income and Rs.1 crore for taxation of immovable property in absence of the source was treated as unexplained investment of the assessee and added back with the total income of the assessee which works out to total amount of Rs.1,01,37,250/-. Aggrieved, the assessee filed an appeal before the CIT(A) manually on dated 22/03/2018 after getting the glitch in filing on-line appeal . After that the assessee filed appeal on-line with the delay of 380 days. The Ld.CIT(A) passed the order by rejecting the appeal of the assessee in the ground of limitation. The assessee has explained the issue before the CIT(A), but finally the order was passed against the assessee. Being aggrieved on the order, the assessee filed an appeal before us.

4. We heard the rival submission, considered the documents available on the record. The Ld.AR filed a written submission which is kept in the record. The Ld.AR invited our attention in APB page 4 which shows that the assessee has tried to upload the appeal on-line before the department, but was unable to submit the same due to technical error. He drew our attention in APB pages 5 to 11 where it is showing that the appeal was filed on 22/03/2018 physically before the CIT(A). But the Ld.CIT(A) has taken the on-line appeal which was uploaded by

380 days delay and accordingly passed the order without considering the merit of the case. The Ld.AR invited out attention in appeal order para 5 to 6, which are reproduced as below:-

“5. Findings and decision

5.1 Condonation of Delay: The perusal of records reveal that there is delay of more than 380 days in filling appeal by the appellant. In the ground of appeal, the reason for delay in filling appeal, the appellant has stated as under-

"The appeal was filed manually on 22nd march, 2019 due to technical error in uploading online, however the manual appeal was filed as per the timeline."

The submissions by the appellant indicate that no cogent or worth substance explanation has been offered by the appellant to justify the delay of more than 380 days in filling the appeal. The provisions governing the condonation must be construed liberally but at the same time it must be ensured that the appellant does not loose respect for law. The explanation of the appellant is very vague and casual During the course of assessment proceedings, the appellant did not comply with any of the notices issued by the AO, The AO has mentioned in detail the notices including notices for levying penalty for non-compliance as under:-

S.No.	Letter/Notice u/s	Date of Issue	Date of compliance	Remarks
1.	U/ 148	31.03.2017	Within 30 days	Not complied
2.	Reminder letter	05.07.2017	17.07.2017	Not complied
3.	U/s 142(1)	14.08.2017	24.08.2017	Not complied
6.	U/s 142(1)	09.11.2017	20.11.2017	Not complied
7.	U/s 274 r.w.s. 271(1)(b)	20.1.2017	04.12.2017	Not complied

The same attitude of non-compliance has been manifested even in the appellate stage. I am not convinced with the submission of the appellant to allow for the condonation,

In view of the above, I am of the view that there was no reasonable cause for the delay in filing the appeal and hence the request for condonation of delay is not acceded to and rejected.

6. The appeal of the appellant is, therefore, rejected.”

5. The Ld.DR vehemently argued and fully relied on the order of the revenue authorities.

6. In our considered view, we find that the assessee has a reasonable cause for delay in filing on-line appeal. But from filing of the physical copy before the Ld. CIT(A), it is clear that the assessee was not negligent in filing the appeal in time before the CIT(A). We find that there is a reasonable cause for delay in filing the on-line appeal before the appellate authority. We direct the Ld.CIT(A) to condone the delay for 380 days in filing the appeal and pass the order on merit after allowing the assessee a reasonable opportunity for hearing. We are not expressing any view on merit of the case which will impair the appeal hearing before the CIT(A). Needless to say, the assessee shall get a reasonable opportunity of hearing before the CIT(A), in the set aside proceedings.

7. In the result, the appeal of the assessee bearing **ITA 3220/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 21st day of October, 2024.

Sd/-

(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 21/10/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai