

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No. 1015/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Smt. Badar Fatima Hyderabad PAN:AAZPF1800A (Appellant)	Vs.	Income Tax Officer Ward 7(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri A.V. Raghuram, Advocate		
राजस्व द्वारा / Revenue by: Shri Aravindakshan, DR		
सुनवाई की तारीख / Date of hearing: 04/11/2024		
घोषणा की तारीख / Pronouncement: 04/11/2024		

आदेश/ORDER

This appeal filed by the assessee is directed against the order dated 30/08/2024 of the learned CIT (A)-10, Hyderabad, relating to A.Y.2017-18.

2. The brief facts of the case are that, as per the information in possession of the Department under the "Operation Clean Money", the appellant had made cash deposits amounting to Rs.30,00,000/- in the bank account held with Andhra Bank, Mehdipatnam Branch, Hyderabad during the demonetization period i.e. on 9th November, 2016 to 31.12.2016. In view of the

same, since the appellant had not filed return of income despite substantial cash deposit, the case was flagged by the system for issue of notice u/s 142(1) of the Act calling for true and correct return of income for the Asst. Year 2017- 18, There was no response from the appellant to the said notice. Subsequently, further notices u/s 142(1), summons, show cause notices u/s 144 of the Act were also issued, to which the appellant did not comply. The Assessing Officer gathered information from Andhra Bank, Mehdipatnam Branch, Hyderabad calling for bank statement of the appellant for the period from 0).4.2016 to 31.03.2017. Verification of the bank statement of the appellant, it was noticed that there were cash deposits to the tune of Rs.30,00,000/- during the demonetization period i.e. 9th November, 2016 to 31.12.2016. It was also found that there were cash deposits to the tune of Rs.11,74,539/- in the period excluding the demonetization period during the financial year 2016-17. The Assessing Officer held that since the appellant did not comply to the statutory notices issued from time to time and did not file the return of income for the Asst. Year 2017-18, the sources for the total cash deposits made during the financial year 2016-17 amounting to Rs.41,74,539 /- stood unexplained. In view of the same, the Assessing Officer completed the assessment u/s 144 of the Act by making an addition of Rs.41,74,539/- u/s 69A of the Act towards unexplained money of the appellant and the same is taxed u/s 115BBE of the Act.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A), and such appeal has been filed on 10/05/2022 with a delay of 862 days. The appellant has filed a petition for condonation of delay before the learned CIT (A) and explained the reasons for not filing the appeal in time. The learned CIT (A) after considering the relevant affidavit filed by the assessee and also taken note of certain judicial precedents including the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition Anantnag & ... vs Mst. Katiji & Ors (AIR 1987 S.C 1353) on 19 February, 1987 rejected the appeal filed by the assessee unadmitted by holding that the reasons given by the appellant for not filing appeal on or before due date provided under the Act, does not come under reasonable cause.

4. Being aggrieved by the order of the learned CIT (A), the assessee is an appeal before the Tribujnal.

5. The learned Counsel for the assessee referring to the affidavit filed by the assessee submitted that out of 862 days, the delay of 786 days is covered by the Covid period and needs to be excluded for the purpose of limitation as per the order of the Hon'ble Supreme Court in M.A. No.,21/2022. If we exclude the delay covered by covid period, the balance delay is only 76 days. The appellant has explained the reasons and according to the affidavit filed by the appellant, she is a non-resident, living

outside India and due to covid pandemic and travel restrictions, she did not come to India since 19th August, 2019. Further, she was not having any information regarding the notice issued and order passed by the Assessing Officer. After she came back to India, noticed the order passed by the Assessing Officer and filed appeal on 10/05/2022 which caused delay of 862 days. The delay in filing of the appeal is due to the circumstances beyond the control of the assessee. Further, the assessee did not get any benefit by not filing appeal in time. Therefore, he submitted that the delay in filing of the appeal before the learned CIT (A) may be condoned and the appeal filed by the assessee may be decided on merit.

6. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that although the appellant claims that she was residing outside India when the Assessing Officer passed the assessment order, but no evidences has been filed to justify her averments. Further, she has not explained with relevant evidences when she had come back to India. Unless these evidences are furnished, the explanation of the assessee cannot be accepted.

8. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the date of assessment order and due date for filing of appeal before the first appellate

authority. The Assessing Officer passed assessment order u/s 144 of the I.T. Act, 1961 on 29/11/2019 and if we presume that the same was served on very same day, the appeal should have been filed on or before 29/12/2019. The appellant has filed appeal on 10/05/2022. Thus, there is a delay of 862 days in filing of the appeal before the first appellate authority. In general, the appellant needs to explain the total delay of 862 days, but because of Covid 19 pandemic which started in the month of March, 2020, the hon Supreme Court in suo motto writ petition No.3/2020 has extended limitation provided under various acts from time to time and upto 1/2/2022 with a grace period of 90 days which is upto 31/05/2022. If we exclude covid period i.e 15/03/2020 and upto 10/05/2022 (the date of filing of the appeal), then the period of delay left for condonation is only 76 days i.e. upto 15/03/2022. The appellant claims that she was a non-resident Indian residing outside India and due to covid pandemic and travel restrictions, she could not travel to India since 19th August, 2019. There is no doubt with regard to these facts because during Covid Period, travel restrictions were imposed by various countries and because of restrictions, people cannot travel from one place to another place. If the assessee files necessary evidences to prove that during the above period she was living outside India, then her arguments needs to be accepted. However, the fact with regard to when she came back to India was not available either in her affidavit filed before the learned CIT (A) or before the Tribunal. Unless she proves her

averments with necessary evidences that she could not visit India upto 15/03/2022, then in my considered view, the learned CIT (A) ought to have condoned the delay in filing of the appeal upto the date of covid and including the period covered by Covid. Since these facts are not available, in my considered view, the matter needs to go back to the file of the first appellate authority to give one more opportunity of being heard to the assessee. Thus, I set aside the order of the learned CIT (A) and restore the issue back to the file of the learned CIT (A) to deal with the delay in filing of the appeal in light of averments made by the assessee. The learned CIT (A) is directed to reconsider the issue in light of averments of the assessee that she could not travel to India during that period because of which she could not file appeal on or before 15/03/.2022 in light of any other evidences that may be filed by the assessee to justify her case.

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

Order pronounced in the Open Court on 4th November, 2024.

Sd/-

(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Hyderabad, dated 4th November, 2024.

Vinodan/sps

Copy to:

S.No	Addresses
1	Smt. Badar Fatima, 12-2-158/B Murad Nagar, Asif Nagar, Hyderabad
2	Income Tax Officer Ward 7(1) Signature Towers, Opp: Botanical Gardens, Kondapur, Hyderabad 500084
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order