

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 5286/MUM/2024

(Assessment Year : 2018-19)

Sulakshana Securities Limited

Mafatlal Centre, Nariman Point,

Mumbai, 19-Maharashtra

PAN: AABCS1783L

..... Appellant

v/s

DCIT, Circle – 1(3)(1)

Aayakar Bhavan,

Mumbai

..... Respondent

Assessee by : Shri Amod Prabhudesai / Naman Jain

Revenue by : Shri Prashant Barate, Sr.DR

Date of Hearing – 11/11/2024

Date of Order - 12/11/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 04/09/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Addl./Joint Commissioner of Income Tax (Appeals)-2, Vadodara [*"learned Addl./Joint CIT(A)"*], for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: -

"1. In the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that there was sufficient cause for delay in filing the appeal before the Ld. CIT(A) of 51 days and accordingly, as

a principle of natural justice to the appellant being well-settled principle in law, ought to have adjudicated ground No. 1 to 3 raised in the appeal filed before the Ld. CIT(A) on merits.

2. In the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the adjustment made by the Ld. DCIT, CPC to the book profit of Rs. 1,43,26,442/- representing adjustment u/s. 115JB(2C) ignoring the fact that the said adjustment is already made in computing book profit returned for the year of Rs. 3,81,83,765/- which has resulted into double addition being illegal and bad-in-law. Accordingly, it is humbly requested that a direction be given to the Ld. DCIT, CPC to delete the said adjustment made of Rs. 1,43,26,442/- in its entirety.

3. In the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not directing the Ld. DCIT, CPC to grant credit for balance tax deducted at source of Rs. 15,23,356/-.

4. It is humbly prayed that the reliefs as prayed for hereinabove and/or such other reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice should be granted."

3. We have considered the submissions of both sides and perused the material available on record. In the present case, at the outset, it is evident that the learned Addl./Joint CIT(A) has passed the impugned order dismissing the appeal filed by the assessee on the ground of delay without adjudicating the grounds raised by the assessee against the intimation dated 16/10/2019 issued under section 143(1) of the Act. From the perusal of the impugned order, we find that the assessee requested for condonation of delay in filing the appeal and also explained the circumstances leading to a delay of 51 days in filing its appeal before the learned Addl./Joint CIT(A). The reasons stated by the assessee before the learned Addl./Joint CIT(A) for seeking condonation of delay in filing the appeal are as follows: -

"1. We write this letter with a request to kindly condone the delay which has occurred in filing the appeal before Your Honour for the assessment year under reference i.e. 2018-19 against the Intimation u/s. 143(1) of the Income Tax Act, 1961 (the Act) dated 16.10.2019. We submit herewith following facts for your kind consideration:

(a) The appellant is a wholly owned subsidiary of Navin Fluorine International Limited. Further, the appellant does not have any business but owns a property,

which has been rented out to Navin Fluorine International Limited and UCO Bank. Hence, except for rental income, the appellant does not have any other material source of income, which is evident from the Computation of Total Income for the assessment year 2018-19, which is enclosed herewith marked as Exhibit"1".

(b) The Intimation under appeal was e-mailed on the Email ID registered with Income Tax Department i.e. richard.saldanha@nfil.in on 26.10.2019.

(c) However, the accountant of the appellant viz; Mr. Richard Saldanha who looks after taxation matters of the appellant and to whom the aforesaid Email ID belongs; was not there in the office for few days around 26.10.2019. When he resumed, through oversight, he did not notice the said intimation on email. Hence, upon receipt of intimation physically on 06.11.2019, he forwarded the same to our office addressing Mr. Aamod Prabhudesai, who looks after the matter along with Mr. Rohit Adalja, the Partner of the Firm.

(d) However, Mr. Aamod Prabhudesai took a view that this is a matter of rectification u/s. 154 of the Act and hence, noted in his worksheet to file a rectification letter there-against. Since 31.12.2019 was the last day whereby scrutiny assessments were to be completed for the assessment year 2017-18, he took the matter of filing rectification letter u/s. 154 of the Act against the aforesaid intimation to the concerned Partner in the first week of January, 2020, wherein the Partner advised him that having passed an intimation u/s. 143(1) of the Act, the view could be taken that it is not a rectifiable matter u/s. 154 of the Act and hence, it is advisable to file an appeal there-against.

2. In view of the aforesaid reasons, this appeal has been filed after its due date of filing and accordingly, there is a delay in filing the said appeal by 51 days. In the facts and circumstances of the case and on the principal of natural justice and also keeping in view that this oversight mistake has happened for the first time, it is humbly submitted to Your Honour to kindly condone the delay of 51 days in filing the same and accept the same and decide the grounds of appeal on merits.

3. We trust Your Honour will be pleased to accede to our above request and oblige."

4. As is evident from the impugned order, the learned Addl./Joint CIT(A) did not agree with the submissions of the assessee and held that the assessee neither mentioned any cogent and convincing ground for the delay in filing the appeal nor furnished anything to prove that it had acted diligently and was not guilty of negligence. Accordingly, the learned Addl./Joint CIT(A) dismissed the appeal filed by the assessee on the ground of delay. During the hearing, no material was brought on record to controvert the submission of the assessee made before the learned Addl./Joint CIT(A) seeking condonation of delay.

5. In view of the facts and circumstances of the present case, as noted above, we are of the considered view that the assessee has proved sufficient cause for not filing the appeal before the learned Addl./Joint CIT(A) within the prescribed limitation period. Accordingly, we are of the view that the said delay of 51 days should be condoned. Hence, we deem it appropriate to set aside the impugned order and restore the matter to the file of the learned Addl./Joint CIT(A) for consideration on merits, as per law, after condoning the delay in filing the appeal by the assessee. We order accordingly. Needless to mention no order shall be passed without affording the reasonable and adequate opportunity of hearing to the parties. The assessee is directed to appear before the learned Addl./Joint CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned Addl./Joint CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 12/11/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 12/11/2024
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai