

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 960/Mum/2024 (A.Y. 2017-18)

Ravji Bala Natekar Cabin No. 12, Mumbai Panvel Highway Check Naka, Mankhurd Maharashtra-400 088. PAN : AACPN0068R (Appellant)	Vs.	Add.CIT/JCIT/ACIT/ ITO, National Faceless Appeal Centre Navi Mumbai (Respondent)
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Assessee by	Shri Mehul Shah
Department by	Shri R.R. Makwana
Date of Hearing	19.08.2024
Date of Pronouncement	22.10.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above said appeal, the appellant Shri Ravji Bala Natekar is an octroi clearing agent and it was claimed that after assessment year 2017-18, the business was closed. In the above said appeal, the learned Assessing Officer (Ld. AO for short) assessed his income of Rs. 24,99,120/- including cash deposits of Rs. 18,34,500/-. From assessment order, it is observed that a notice u/s. 148 of the Income Tax Act (the Act for short) was issued to the appellant and the same was not complied with and no return of income was filed by the appellant in pursuance of the said notice. Subsequently, notices u/s. 142(1) were also issued calling for the required information and also requesting the appellant to file the return of income. But the Ld. AO has noted that there is no compliance from the appellant to these notices also. Another notice was also served through the Verification Unit of National Faceless Assessment Centre and there is no response from the appellant. In

these circumstances, the Ld. AO issued notice u/s. 144 of the Act alongwith a show-cause notice asking him to give his explanation with regard to the above cash deposits, failing which assessment would be completed ex-parte as best judgement assessment. As there was no response to this notice also, the Ld. AO proceeded with making addition of cash deposits made by appellant in his bank account to the extent of Rs. 18,34,500/- while completing the assessment.

2. Aggrieved by the order of the Ld. AO, an appeal was filed before the learned Commissioner of Income Tax (Appeals) [Ld. CIT(A) for short) with delay of 214 days and reasons for delay stated by the appellant is as under :-

“The Assessee is less literate, and had entrusted the task of return filing and related matters to a Tax Practitioner. The said tax practitioner did not pay attention to the notices, and the assessee was not aware as to gravity of the proceedings against him. It is prayed that the delay in filing the appeal may kindly be condoned.”

3. The Ld. CIT(A) has mentioned several cases law including some of the cases relating to Hon'ble Apex Court and came to the conclusion that there is no sufficient cause for condoning the delay in the institution of appeal by the appellant and the application of the appellant for condonation of delay was rejected. The Ld. CIT(A) has also mentioned that the appellant could not show any cogent reason for filing the appeal belatedly and just stated that he is less literate and hence held that the appellant could not sleep over the filing of appeal within statutory limit and delay of 214 days was not explained with proper reasoning.

4. Aggrieved by the order of the Ld. CIT(A) the appellant filed an appeal before the ITAT by stating that he was prevented by a sufficient cause in filing the appeal and circumstances were beyond his control and the appellant did not have any intention in filing the appeal with delay because he does not gain anything.

5. During the proceedings before the ITAT, Ld. AR of the appellant filed a paper book and argued that the Ld. CIT(A)/NAFC erred in dismissing the appeal at threshold, without considering the merits of the case and without adjudicating other grounds of appeal raised before him. It was argued that the Ld. CIT(A) erred in upholding the action the Ld. AO in making addition of Rs. 18.34 lakhs being cash deposited in the bank account invoking provisions of section 69A of the Act without considering the outgo from the bank account of octroi payments made on behalf of the clients. It was further submitted that he is an octroi collection agent who receives payments from the clients and pays the same to the Government Department on behalf of the clients. Without considering this important argument, the Ld. CIT(A) has added all cash deposits without giving opportunity of being heard relating to source of cash deposits and hence action of the Ld. CIT(A) is incorrect while upholding the addition made by the Ld. AO in this context.

6. Ld. DR has argued that despite opportunities given to the appellant, he did not give any reasoning nor source for cash deposits in his bank account and left with no option, the Ld. AO made the addition u/s. 144 of the Act by following principles of best Judgement assessment. It was further argued by Ld. DR that the appellant has not appeared before the Ld. AO and appellant has not filed appeal on the order of the Ld. AO within due date. In fact, delay was more than 8 months in filing the appeal before the Ld. CIT(A) and even before the Ld. CIT(A), the appellant has not given any cogent reasoning and hence both the Orders of the Ld. AO and the Ld. CIT(A) are correct and hence should not be disturbed.

7. Heard both sides. It is a fact that the appellant has not appeared before the Ld. AO nor filed any written submission. It is also a fact that there is a considerable delay in filing the appeal before the Ld. CIT(A). But having found merit in the arguments of Ld. AR of the appellant that the appellant is less literate and also there is mistake on the part of the tax practitioner who filed appeal with delay and also taking into consideration the argument of Ld. AR

of the appellant that he has got a very good case on merits because the Ld. AO has not taken into consideration the withdrawals of the above cash deposits to be paid into Government account, it is decided to give one more opportunity to the appellant and hence the matter is remanded to the file of the Ld. AO as no details were filed. The appellant is directed to cooperate with the department and file all his submissions relating to cash deposits and withdrawals, if any. After taking into consideration the submission of the appellant, the Ld. AO is directed to pass a speaking order and needless to say that an opportunity of being heard to be given to the appellant.

8. Appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open court on 22nd October, 2024.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 22.10.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai