

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4314/MUM/2024
(Assessment Year: 2012-2013)**

Sanjana Sanjay Kathe

4, Matadin Yadav Chawl Tanaji Nagar,
Kurar Village, Malad (East),
Mumbai – 400097, Maharashtra.
[PAN:AHOPK8544N]

..... **Appellant**

Income Tax Officer

Ward 34(3)(6), Mumbai

Kautilya Bhavan, Bandra Kurla Complex,
Bandra (East, Mumbai – 400051,
Maharashtra.

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Prakash Jhunjunwala
For the Respondent/Department : Shri Suresh Gaikwad

Date

Conclusion of hearing : 28.11.2024
Pronouncement of order : 29.11.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 01/03/2024, passed by the National Faceless Appeal Centre (NFAC), New Delhi [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 21/12/2019, passed under Section 144 read with Section 147 of the Act for the Assessment Year 2011-12.
2. The Assessee has raised following grounds of appeal :

"The appellant individual prefers an appeal against the order passed by Ld. Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre, Delhi dated 01/03/2024 on the following amongst other grounds, each of which are without prejudice to any other :-

- 1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the validity of notice u/s 148 issued in absence of new tangible material, without independent application of mind and without having reason to believe that income chargeable to tax has escaped assessment;*
- 2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the validity of notice u/s.148, though had been issued in violation of Sec. 149(1)(b) of the Act;*
- 3.0 On facts and circumstances of the case and in Law, Ld. CIT(A) ought to have considered the bonafide reasons and reasonable cause that had precluded the appellant to participate in the assessment and appeal proceeding;*
- 4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.69A of Rs.54,13,043/ of gross traded value of listed shares of SVC Resources Ltd, Global Capital Market Ltd and Tilak Ventures Finance Ltd;*
- 5.0 The Ld. CIT(A), before confirming the addition of Rs.54,13,043/-, ought to have considered the understated vital facts, being;*
 - a) The appellant is not the owner of money, which is not recorded in books of accounts and whose nature and source is not explained and the disputed sum pertain to the shares purchased and sold through intra-day and inter-day transactions;*
 - b) The shares of listed companies had been purchased and sold on floor of Stock Exchange at prevailing market price, on which short term and speculation profit has been earned of Rs.64,846/-;*
 - c) The disputed sum has not been received by the appellant and only the profit/loss on traded shares are found credited in appellant's books of account."*

3 The relevant facts are in brief are that the assessment under Section 144 read with Section 147 of the Act was framed on the Appellant

vide Assessment Order, dated 21/12/2019, whereby the income of the Appellant was assessed at INR.56,05,473/- after making addition of INR.54,13,043/- under Section 69A of the Act. The Assessing Officer was of the view that the Appellant had indulged in bogus share transaction in penny stock companies [namely M/s SVC Resources Ltd, Global Capital Markets and Tilak Ventures Finance Ltd] and therefore, the Assessing Officer made addition of entire amount of sale proceeds amounting to INR.54,13,043/- received by the Appellant invoking provisions contained in Section 69A of the Act.

- 4 The Appellant challenged the Assessment Order, dated 21/12/2019, in appeal before the CIT(A) which was dismissed vide order, dated 01/03/2024. The CIT(A) noted that despite having been granted sufficient opportunities, the Appellant had failed to respond to notice of hearing. The CIT(A) observed that the onus on complying with the notice of hearing was on the Appellant. Since no written submissions were filed by the Appellant, the CIT(A) declined to interfere with the assessment order.
- 5 Now the Appellant has preferred the present appeal before the Tribunal which is accompanied by application seeking condonation of delay of 115 days.
- 6 The Learned Authorised Representative for the Appellant appearing before us, at the outset, submitted that the delay in filing the present appeal be condoned and ex-parte order passed by the CIT(A) be set aside. In this regard, the Learned Authorised Representative for the Appellant placed reliance upon the affidavit filed along with application for seeking condonation of delay, the relevant extract of which are as under:

"2. THAT, Ld. Commissioner of Income Tax (Appeals) had passed the appeal order pertaining to Assessment year 2012-13 on

01/03/2024 and the due date to file the 2nd appeal before Hon'ble ITAT was 30/04/2024. However, the said 2nd appeal had been filed on 23/08/2024 and accordingly, there is a delay in filing of the 2nd appeal of 115 days. The delay in filing of the appeal had occurred under the bonafide reasons and compelling circumstances beyond my control, stated as under:

- a) *The 1st appeal order was not served to me, since was sent at email address of my husband. However, due to change in his email address, I could not receive the 1st appeal order passed and resultantly could not file the 2nd appeal in time. Further, due to bitterness with my earlier Chartered Accountant, he did not assist me in the assessment and 1st appeal proceedings passed ex-parte and it is only upon receipt of notice of penalty dated 16/08/2024, I was made aware that the 1st appeal had been dismissed ex-parte and accordingly. I immediately appointed a new Chartered Accountant and filed the 2nd appeal before Hon'ble ITAT with a prayer of condonation of delay;*
 - b) *I am an undergraduate and am not aware of Income tax laws. My entire accounts and tax related matters were earlier handled by my father, however due to his serious medical illness and ultimate death occurred on 10/12/2023 (death certificate attached), thus I could not attend the assessment and appeal proceeding and also could not file the 2nd appeal in time;*
 - c) *I was extremely occupied and disturbed in attending the serious medical illness of my father in law, as he is suffering from heart ailment and was hospitalised and therefore, I was not able to concentrate in the Income tax matters and thus could not file 2nd appeal in time;*
3. *THAT, I declare that there is no wilful or deliberate attempt nor*

any gross negligence for my non-compliance during assessment and 1st appeal proceedings and the delay in filing of the 2nd appeal had occurred under the bonafide reasons as stated herein above.”

- 7 The Learned Authorised Representative for the Appellant submitted that on account of the above personal difficulties faced by the Appellant, the Appellant could not make proper representation before Assessing Officer and the CIT(A). The Learned Authorised Representative for the Appellant vehemently submitted that there was no willful or deliberate attempt on the part of Appellant to run away from income tax proceedings. It was also pointed out that even the order passed by the First Appellate Authority was not received by the Appellant due to change of email address of her husband.
- 8 Per contra, the Learned Departmental Representative submitted that the Appellant had failed to take the benefit of opportunities granted by the Assessing Officer and the CIT(A). The Appellant had not been vigilant and had even filed the present appeal after delay.
- 9 In rejoinder, the Learned Authorised Representative for the Appellant submitted that the Appellant was prevented by reasonable cause from filing the present appeal before the Tribunal. It was further submitted that on merits the Appellant has a good case as the Appellant had undertaken intra-day trade loss of INR.353/- from the sale of shares of SVC Resources Limited. Further, the Appellant had made Short Term Capital Gain of INR.14,621/- and INR.76,820/- from sale of shares of M/s.Global Capital Limited and M/s.Tilak Ventures Finance Limited. The aforesaid trade loss and Short Term Gains were duly disclosed in the return of income. Whereas the Assessing Officer has made addition of entire sale consideration of INR.54,13,043/- in the hands of the Appellant

invoking provision contained in Section 69A of the Act.

- 10 We have considered the rival submissions and perused the material on record. We note that the Affidavit file along with application along with condonation of delay is supported by death certificate of the father of Appellant in medical records of the father-in-law of the Appellant. In view of the explanation provided by the Appellant for delay in filing the appeal as stated in the application seeking condonation of delay and the affidavit, we hold that the Appellant was prevented by reasonable cause in filing the present appeal before the Tribunal within the prescribed time and therefore, the delay of 115 days in filing the present appeal is condoned.
- 11 On perusal of the orders passed by the authorities below we find that the Appellant was proceeded ex-parte by the Assessing Officer and by the CIT(A). We note that during the assessment proceedings notices were sent on the email ID of the tax consultant with whom the Appellant did not foster good professional relationship on account of which the notices issued were not complied with. As regards non-compliance of notice of hearing issued by CIT(A), the Appellant has already explained that the Appellant was traversing through difficult time in her personal life. Given the totality of facts and circumstances of the present case and the nature of addition made by the Assessing Officer, we deemed it appropriate to set aside the order dated 01/03/2024 and the Assessment Order dated 21/12/2019 passed under Section 144 read with Section 147 of the Act with the directions to the Assessing Officer to decide the issue raised in the present appeal afresh after granting the Appellant a reasonable opportunity of being heard. Since we are remanding the issue back to the file of Assessing Officer, all rights and contention of the Appellant relating to the initiation of the re-assessment proceedings and the addition made on merits are left open. The

Appellant would be free to file such documents/details as the Appellant deemed fit to meet the queries raised by the Assessing Officer during the remand proceedings. It is clarified that in case the Appellant fails to co-operate during the assessment proceedings or does not appear before the Assessing Officer, the Assessing Officer shall be at liberty to adjudicate upon the issue on the basis of material already forming part of the assessment record. In terms of the aforesaid Ground No.3 raised by the Appellant is allowed for statistical purposes while all the other grounds raised by the Appellant are dismissed as having been rendered as infructuous.

- 12 In terms of paragraph 11 above the present appeal is treated as allowed for statistical purposes.
- 13 In result, the appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 29.11.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.11.2024
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai