

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. Nos.1354 to 1357/Kol/2024

Assessment Years: 2018-19, 2019-20, 2020-21, 2022-23

MANAS.....Appellant

14, RBI Green Wood Nook,
369/2, Purbachal, Kalitala Road,
Kolkata – 700078.

[PAN: AABAM3353Q]

vs.

ITO, Ward-1(4), Exemption, Kolkata..... Respondent

Appearances by:

Shri G. Banerjee, FCA, appeared on behalf of the appellant.

Shri Rajat Datta, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 03, 2024

Date of pronouncing the order : December 04, 2024

आदेश / ORDER

Per Bench:

The above captioned appeals filed by the assessee against the order of the Commissioner of Income Tax, Appeal ADDL/JCIT(A)-2, Jaipur [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') pertaining to four assessment years i.e 2018-19, 2019-20, 2020-21 and 2022-23 respectively. Since, the issues involved in all these appeals arise from common set of facts and related to same party, therefore, these have been heard together and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity. Since the grounds in all appeals are identical, except change of figures, the first appeal being ITA No.1354/Kol/2024 for assessment year 2018-19 is taken as lead case.

2. The key dispute involved in this appeal relates to the correctness of the intimation issued u/s 143(1) of the Act on 09.02.2020 for the assessment year 2018-19, wherein, the Assessing Officer assessed the income of the assessee at Rs.720100/- as income by disallowing accumulation of income of Rs.720100/- as claimed by the assessee. The contention of the assessee was that the assessment was arbitrary and erroneous and without merit.

3. Dissatisfied with the above order, the assessee challenged the order of intimation by filing appeal before the Id. CIT(A). However, Id. CIT(A) did not consider the appeal of the assessee and dismissed the appeal of the assessee only on the ground that there was a significant delay of 1517 days in filing the appeal before him. While passing the impugned order, the Id. CIT(A) did not consider the case on merit but simply dismissed the appeal on the ground of delay.

4. Aggrieved, the assessee is in appeal before this Tribunal raising multiple grounds, however, the sole grievance of the assessee is that while passing the impugned order, the Id. CIT(A) did not look into the merit of the case which is a valid point as prescribed u/s 250(6) of the Act. The Id. AR also highlighted that not deciding the appeal on merits would result in undue hardship and the action of the Id. CIT(A) is a violation of principles of natural justice. The Id. AR contended that the delay in filing the appeal is due to negligence of the earlier counsel engaged who failed to file the appeals on time and due to the negligence of the counsel, the assessee should not be suffered. The Id. AR further submitted that the delay in filing the appeal is neither wilful nor attributable to any extraneous or ulterior motive on the part of the assessee and the assessee is not benefitted in any way from delayed filing of this appeal. The Id. AR in order to substantiate the submission

has stated that as per Article 265 of the Constitution of India emphasises that no tax can be levied and collected except by authority of law, however, denial of hearing on merit of the case only on the ground of delay is not proper. The ld. AR therefore prayed that direction may be issued to the ld. CIT(A) or may remand back the issue to the file of the Assessing Officer with a direction to the Assessing Officer to reexamine the issue afresh in accordance with law after giving reasonable opportunity of being heard to the assessee.

5. On the other hand, the ld. DR opposed to the condonation of delay and argued that the assessee did not demonstrate any reasonable cause for the inordinate delay in filing the appeal. He, therefore, prayed that the ld. CIT(A) was justified in dismissing the appeal as the explanations given by the assessee was inadequate and lack of credibility. That if at this stage, the appeals may be entertained after such long delay, it could set as wrong precedent, therefore, the appeal may be dismissed.

6. After hearing the rival submissions and perusing the materials available on record, we find that there was substantial delay in filing the appeal. However, we also emphasise that the opportunity of justice cannot be sacrificed at the alter of the technicalities. We note that it is well-settled principle that justice should prevail over procedural lapses especially when a party shows genuine intention to rectify its error. Hon'ble Supreme Court in number of cases, time and again, held that when merits and technicalities pitted against each other, then merit alone deserves to be prevailed, because, if you throw out a meritorious case out of judicial scrutiny on the grounds of technicalities, then you may deprive the right of the petitioner in pursuing their case. We find that the assessee explained the delay occurred due to negligence of the then engaged counsel, however, this explanation by itself cannot be

considered as entirely satisfactory. We also feel that denial of opportunity of being heard on merits would cause irreparable injustice to the assessee. We also note that the merit of the case should not be ignored due to procedural delay, especially when the tax liability involved substantial right. Moreover, the assessee cannot take a plea that only on the ground of negligent on the part of the counsel, there was a delay in filing the appeal. Under the circumstances, we feel it necessary to impose a cost of Rs.2500/- for each appeal (Totalling to Rs.10,000/-) and remand the matter back to the file of the Assessing Officer with a direction to reexamine the issue afresh since the Id. CIT(A) dismissed the appeal without addressing any issue of the assessee. During the appellate proceedings, the assessee was deprived of opportunity to present its case on merits. We, therefore, direct the Assessing Officer to reexamine the issue involved by allowing the assessee a fair chance to submit all relevant documents and explanations before the Assessing Officer. The Assessing Officer will consider submissions of the assessee and will pass a fresh order in accordance with law after granting due opportunity of being heard to the assessee. It is also clarified that the instant appeal is allowed only for statistical purposes and our direction of re-examination does not imply any opinion on the merits of the case. In terms of the above findings, the appeal of the assessee is allowed for statistical purposes.

7. Since the facts and issues involved in I.T.A. Nos.1355 to 1357/Kol/2024 are identical to that has been discussed in ITA No.1354/Kol/2024 including delay of 1454, 831, 371 days respectively, our findings/directions given above will mutatis mutandis apply to these appeals also.

8. In the result, all the captioned appeals of the assessee are allowed for statistical purposes.

Kolkata, the 4th December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: .12.2024.

RS

Copy of the order forwarded to:

1. MANAS
2. ITO, Ward-1(4), Exemption, Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches