

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. No.1871/Kol/2024
Assessment Year: 2009-10

Saswati Samai..... Appellant

E-20/7, Karunamoyee
Housing Estate, Block-ED,
Sector-11, North 24 Parganas,
Salt Lake, Sech Bhawan,
W.B – 700091.

[PAN: AZTPS5513N]

vs.

ACIT, CPC, Bengaluru.... Respondent

Appearances by:

Shri S. Jhajharia, AR, appeared on behalf of the appellant.

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

Date of concluding the hearing : December 02, 2024

Date of pronouncing the order : December 03, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 12.07.2024 of the Commissioner of Income Tax, Appeal ADDL/JCIT(A)-2, Nagpur [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The brief facts of the case are that the assessee is an employee of IBM India Pvt. Ltd. and filed return for assessment year 2009-10 reporting a higher income of Rs.11,59,031/- with TDS of Rs.3,32,206/-, however, actual taxable income as per Form 16 and Form 26AS was Rs.2,01,865/- with TDS of Rs.5,824/-. The return of the assessee was processed u/s 143(1) by CPC, Bengaluru leading to a demand of Rs.4,38,868/- which was later adjusted with refund of A.Y 2012-13 as per intimation order of A.Y 2012-13. Upon receiving the information

about adjustment, the assessee approached before the ld. CIT(A) after a considerable delay of approximately 14 years. However, the ld. CIT(A) dismissed the appeal on the ground of delay itself without examining on merits of the case. The assessee contended that no communication of demand or adjustment was ever received and argued that the ld. CIT(A) should have considered the appeal on merits rather than only dismissing the appeal solely on account of delay. It is further argued that as per Article 265 of the Constitution of India, the department is duty bound to assess the correct income and levy taxes accordingly.

3. On the other hand, the ld. DR argued that the delay was substantial and the ld. CIT(A) was correct in dismissing the appeal on this ground.

4. We, after hearing the rival submissions and considering the merit of the case, note that although there was a considerable delay in filing the appeal before the ld. CIT(A), the ld. CIT(A) did not consider the reasons for such delay but simply dismissed the appeal without examining the case on merit. We hold merit in the contention of the assessee that no notice of demand or adjustment was ever received by the assessee and this fact needs proper adjudication. We note that the ld. CIT(A) simply dismissed the appeal of the assessee without considering the Article 265 of the Constitution of India which speaks about correct and lawful taxes should be assessed and collected. We further note that since it is a well settled principle of law that unless authority of law, no tax can be collected, in our considered view, if the appeal filed by the assessee is rejected on technical ground of not filing appeal on or before the due date, then it is as good as the taxes has been collected without an authority of law contrary to Article 265 of the Constitution of India. We rely on the decision of the Coordinate Hyderabad Bench of this Tribunal in the case of Rama Krishna

Ramisetty vs. ITO in ITA No.850/Hyd/2024 dated 04.11.2024. Therefore, going by the facts of the present case treating this as a special case, we are of the opinion that the delay in filing of appeal before the ld. CIT(A) needs to be condoned. Thus, we condone the delay in filing of the appeal before the ld. CIT(A) and set aside the order of the ld. CIT(A) and in the interest of justice and fairness, we remand the matter to the file of the ld. CIT(A) with a direction to adjudicate the matter on merits in accordance with law after providing reasonable opportunity of being heard to the assessee.

5. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 3RD December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 03.12.2024.

RS

Copy of the order forwarded to:

1. Saswati Samai
2. ACIT, CPC, Bengaluru
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches