

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.998 to 1001/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Satish Bandapelly Hyderabad PAN:ADXPB2169D (Appellant)	Vs.	Income Tax Officer Ward 15 (1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri P Murali Mohan Rao, CA
राजस्व द्वारा / Revenue by:		Shri Srinath Sadanala, DR
सुनवाई की तारीख / Date of hearing:		03/12/2024
घोषणा की तारीख / Pronouncement:		05/12/2024

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These 4 appeals by the assessee are directed against four separate orders dated 5/8/2024 and 17/08/2024 of the learned CIT (A)-NFAC Delhi, arising from assessment orders passed u/s 147 r.w.s. 144 r.w.s. 144B of the I.T. Act, 1961 and penalty orders passed u/s 271AAC(1), 271B, and 271F of the I.T. Act, 1961 respectively for the A.Y 2017-18.

2. The assessee has raised identical grounds in all these appeals. The grounds raised in ITA No.998/Hyd/2024 are reproduced as under:

S.No	Grounds of Appeal	Tax effect
1	The order of the Ld. CIT(A) u/s 250 of the Act dt. 05.08.2024 is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.	General ground
2	The Ld. CIT(A) erred in dismissing the appeal and not condoning the delay of 551 days in filing the appeal before him, without appreciating that the appellant has reasonable cause for such delay in filing of the appeal.	Technical ground
3	The Ld. CIT(A) ought to have admitted the appeal and ought to have heard the appeal on the basis of merits rather than dismissing the appeal without appreciating that the delay is due to reasons which are beyond the control of the appellant.	Technical ground
4	The Ld. CIT(A) has erred in rejecting the appeal on technical reason of delay in filing the appeal which amounts to denial of justice to the appellant.	Technical ground
5	Appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.	General ground

3. At the time of hearing, the learned AR of the assessee has submitted that the learned CIT (A) has dismissed all the 4 appeals of the assessee filed against the assessment order as well as respective penalty orders on the ground of limitation by declining the condonation of delay in filing the appeals. He has pointed out that there was a delay of 551 days in filing the appeals before the learned CIT (A) against the assessment order

and 378 days in filing the appeals against the penalty orders. The assessee explained the cause of delay as none of these orders was served upon the assessee physically and therefore, the assessee was not having the knowledge of passing the assessment order as well as the penalty orders by the Assessing Officer. He has pointed out that all these orders were passed during the Covid period or just after the covid period and in the absence of any physical service of these orders, the assessee was not aware about these orders and could not file appeal before the learned CIT (A) within the period of limitation. He has filed petition for condonation of delay before the Tribunal which are supported by affidavits of the assessee. Thus, the learned AR has pleaded that the delay in filing the appeals before the learned CIT (A) may be condoned and the matter may be remanded to the record of the learned CIT (A) for adjudication of the appeals on merits.

4. On the other hand, the learned DR relying upon the orders of the learned CIT (A) submitted that the assessee has failed to furnish any sufficient reasons to explain the inordinate delay of 551 days in filing the appeals against the assessment order as well as 378 days in filing the appeal against the penalty orders. He has vehemently objected to the condonation of delay in filing the appeals before the learned CIT (A).

5. We have considered the rival submissions on condonation of delay and perused the relevant material available

on record. There is no dispute that the assessment order was passed on 31/03/2022 towards the end of Covid 19 pandemic and in view of the judgment of the Hon'ble Supreme Court writ petition in Miscellaneous Appeal No.21/2022 taking *Suo motto* cognizance for extending delay during the covid period, the limitation was extended up to 28/02/2022 and thereafter a period of 90 days was allowed to file appeal/petition/suit etc., where the limitation expired during the covid period i.e. 15/03/2020 to 28/02/2-022. The assessee explained the cause of delay before the learned CIT (A) as the assessee was having no knowledge of the orders passed by the Assessing Officer u/s 147 r.w.s. 144 as well as the penalty orders passed u/s 271AAC(1), 271B and 271F of the I.T. Act, 1961. The learned CIT (A) has reproduced the extracts of the reasons explained by the assessee in para 3.4 of the impugned order as under:

"I, Satish Bandapelly, hereby state that, I am acquainted with the facts of the case in respect of appeal which has been filed with the CIT (appeals), for Assessment Year 2017-18, and I state that: The assessment order was passed u/s 147 r.w.s 144 of the Act, as on dt. 31.03.2022 However, the appeal before the Hon'ble CIT-(A) has to be filed within 30 days of the receipt of order. The due date of filing was on 30.04.2022. The appeal could not be fled in time as the same has not been brought to the notice of me. The appeal could be fled on 02.11.2023 with the delay of 551 days as the appeal was due for filing on 30.04.2022 and instead of that the same is being fled on 02.11.2023. In view of the above reasons, the delay may please be condoned and the appeal may please be considered as due to circumstances which were beyond the control of the assessee."

6. Thus, the assessee has briefly stated the reasons for delay as having no knowledge of the order passed by the

Assessing Officer and pleaded for condonation of delay. The learned CIT (A) declined to condone the delay on the ground that the reasons explained by the assessee are not sufficient cause for condonation of delay as held in para 6.1 as under:

“6.1. The appellant, in the present situation, appears to be guilty of laches or negligence and does not take appropriate steps to peruse the remedy till about 551 days and thus does not take appropriate action in filing the appeal within the prescribed time. In the light of the above discussion and considering the facts and position of the law on this issue, I find that there is no sufficient cause for condoning the delay in the institution of appeal by the appellant and thus the application of the appellant for condonation of delay is hereby rejected.”

7. The assessee has filed a petition for condonation of delay before the Tribunal and elaborated the reasons/cause of delay in filing the appeal before the learned CIT (A). The condonation petition has been supported by the affidavit of the assessee wherein the assessee has stated as under:

“Therefore, we aggrieved of the above order and the remedy for redressal of our grievances lies in filing of the appeal before the learned CIT (A) u/s 250 of the Act. As per the provisions of the Act, the appeal before the learned CIT (A) has to be filed within 30 days of the receipt of the order i.e. on or before 30/01/2022. However, the appeal before the learned CIT (A) could not be filed within the time prescribed because the physical certified copy of the order passed u/s 144 r.w.s. 147 has not been received by the assessee till date. Thus, the appeal was filed on 2/11/2023 with a delay of 551 days from the period 30/04/2022 to 2/11/2023. However, the learned CIT (A) rejected the petition for condonation of delay without considering the “Affidavit” filed and reasons submitted, which is against to the principles of natural justice and without following the judicial pronouncements on this issue”.

8. The Department has not disputed the fact that the orders passed by the Assessing Officer u/s 147 r.w.s. 144 as well as the penalty orders passed u/s 271AAC(1), 271B and 271F of the I.T. Act, 1961 were not served upon the assessee physically but all these orders were sent to the email ID registered with the Department. The learned AR of the assessee has explained that the email registered with the Department was not functional during the said period and therefore, the impugned orders were missed the attention of the assessee. Further, the assessee filed the application for obtaining a certified copy of these orders which took a considerable time and hence, there was a further delay even after the covid period for filing the appeal before the learned CIT (A). Hence, the learned AR has pleaded that due to the non-receipt of the notices, the assessment order as well as penalty orders passed ex-parte, the assessee could not take necessary steps for filing the appeals in time. Thereafter, the learned CIT (A) has also passed all the impugned orders ex-parte and dismissed the appeals of the assessee as not maintainable being barred by limitation.

9. Having considered the reasons explained by the assessee in the petition for condonation of delay as well as the contents of the affidavit, we find that the reasons are factually not in dispute, though there is a laxity on the part of the assessee to take necessary steps for filing the appeals within a reasonable period even after the extension of limitation granted by the

Hon'ble Supreme Court due to covid 19 pandemic. However, the expression "sufficient cause" must be considered liberally in favour of the litigant approached the Court belatedly, so that the dispute could be decided as far as possible, on merit and not on technicalities. At the same time, the delay should neither be intentional nor for taking any undue benefit by the assessee. If the reasons explained by the assessee are bonafide and there is no element of deliberate delay or taking undue advantage in filing the appeal belatedly, then the concept of liberal interpretation must be applied while considering the sufficient cause for delay in filing the appeal. In the case in hand, the assessee has explained that the orders passed by the Assessing Officer u/s 147 r.w.s. 144 as well as the penalty orders passed u/s 271AAC(1), 271B and 271F of the I.T. Act, 1961 were not served upon the assessee physically, but these orders were sent to the email ID registered with the Department which could not come to the notice of the assessee due to non-functional email ID at the relevant point of time. Therefore, when the delay in filing the appeal was not with a malafide intention or achieving any ulterior purpose, or an attempt to save the limitation in under hand anyway, we are of the considered opinion that the appeals of the assessee must be decided on merits instead of dismissing on technical reasons. Accordingly, in the facts and circumstances of the case and in the interest of justice, the delay of 551 days in filing the appeal before the learned CIT (A) against the assessment orders and delay of 378 days in filing each appeal against the penalty order passed

u/s 271AAC(1), 271B and 271F of the I.T. Act, 1961 are hereby condoned subject to a cost of Rs.1000/- for each appeal, total amounting to Rs.4000/- to be paid to the Prime Minister's National Relief Fund within a period 30 days from the date of this order. The assessee is directed to submit necessary proof with the Registry within a period of one month from the date of this order. Since the learned CIT (A) has not decided the appeals of the assessee on merits but, dismissed in limine, therefore, all these appeals are remanded to the record of the learned CIT (A) for adjudication on merits after giving an appropriate opportunity of hearing to the assessee. The assessee is directed to update his email ID and also submit the same before the learned CIT (A) so that there should not be non-compliance of the notices issued by the learned CIT (A) in remand proceedings.

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

Order pronounced in the Open Court on 5th December, 2024.

Sd/-

Sd/-

(MANJUNATHA, G) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 5th December, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Satish Bandapelly c/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Income Tax Officer Ward 15(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order