

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.314/Nag./2024
(Assessment Year : 2016-17)

Vijaykumar Shreevishnu Toshniwal
Akanksha Banglow, Mahesh Colony
Behind Dental College, Gourakshan Road
Akola 444 004 PAN – AAAHV6077N

..... Appellant

v/s

Income Tax Officer
Ward-3, Akola

..... Respondent

Assessee by : Shri Kishore P. Dewani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 03/12/2024

Date of Order – 12/12/2024

ORDER

PER V. DURGA RAO, J.M.

Captioned appeal by the assessee against the impugned order dated 21/03/2024, passed by the learned Commissioner of Income Tax (Appeals), ["*learned CIT(A)*"], for the assessment year 2016-17.

2. In its appeal, the assessee has raised following grounds:-

"1. The order passed by Commissioner of Income Tax (Appeals). National Faceless Appeal Centre u/s 250 of I.T. Act 1961 is illegal, invalid and bad in law.

2. The learned CIT(A) erred in refusing to condone the delay even though sufficient cause for delay was placed on record.

3. The learned CIT(A) ought to have condoned the delay considering facts and evidence on record and adjudicated the appeal on merits.

4.3 The order passed by CIT(A) is without providing reasonable opportunity of being heard and is in violation of principles of natural justice. No video conferencing is allowed even though specific request was made in written submission uploaded on 20/01/2024.

5. The order imposing penalty u/s 271(1)(c) of I.T. Act 1961 at Rs.18,29,040/-is unjustified, unwarranted and bad in law.

6. The learned A.O. erred in imposing penalty u/s 271(1)(c) of I.T. Act 1961 at Rs. 18,29,040/- without there being any concealment of income at the hands of assessee.

7. The levy of penalty u/s 271(1)(c) at Rs.18,29,040/- is unjustified, unwarranted and excessive.

8. The show cause notice issued without specifying the limb under which penalty u/s 271(1)(c) is sought to be imposed is bad in law and consequent penalty levied thereupon is liable to be cancelled.

9. Any other ground that shall be prayed at the time of hearing.”

3. When this appeal was taken up for hearing, the learned Counsel for the assessee submitted that the learned CIT(A) has dismissed the assessee's appeal on the ground that there is delay in filing the appeal before him. He, therefore, prayed that the appeal may be restored to the file of the learned CIT(A) for adjudication of the issues raised on merit and in accordance with law and to enable the assessee to substantiate its case.

4. The learned Departmental Representative relied on the order of the authorities below.

5. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. In this case, we find that there is a delay in filing the appeal before the learned CIT(A) and the assessee has not furnished Affidavit explaining the delay before the learned CIT(A) and resultantly the learned CIT(A) was justified in dismissing the

belated appeal filed by the assessee. However, in the interest of justice and also by following the principles of natural justice, we are of the opinion that the assessee deserves one opportunity to establish its case before the learned CIT(A). Consequently, we set aside the impugned order passed by the learned CIT(A) and restore the entire matter to his file for denovo adjudication on merit and in accordance with law. The assessee is also directed to file Affidavit explaining the delay in filing the appeal before the learned CIT(A) by adducing proper evidence. Needless to say that the learned CIT(A) shall provide reasonable opportunity of being heard to the assessee before adjudication of issues on merit.

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

Order pronounced in the open Court on 12/12/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 12/12/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur