

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.315/Nag./2024
(Assessment Year : 2015-16)

ITA no.316/Nag./2024
(Assessment Year : 2017-18)

ITA no.317/Nag./2024
(Assessment Year : 2017-18)

ITA no.318/Nag./2024
(Assessment Year : 2018-19)

Shri Pankaj Nandlal Agrawal
464, Golchha Marg, Sadar
Nagpur 440 001 PAN – ABEPA4572G

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-1(1), Nagpur

..... Respondent

Assessee by : None
Revenue by : Shri Sandipkumar Salunke

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 08/02/2024⁷, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2015-16.

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

"1. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-3, Nagpur erred in dismissing the appeal by stating that the appellant has not made any submission to Rs. rebut the findings given by the AO, however, appellant has submitted the

submission with supporting documents against each and every notice of hearing u/s 250 of the Income Tax Act, 1961 issued for hearings of appeal.

2. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-3, Nagpur erred in confirming the addition of Rs Sixty Lakh merely on the basis of statement u/sRs. 2 132(4) without there being any Corroborative evidence of the existence of any such income in any tangible form.

3. That on the facts and circumstances of the case and in law, the addition of Rs. Sixty Lakh is unjustified, bad-in-law and unwarranted.

4. Any other ground shall be prayed at the time of hearing."

2. During the course of hearing, the Registry has pointed out a delay of 40 days in filing the present appeal before the Tribunal. While going through the record available before us, we find that the assessee has filed an application dated 18/05/2024, requesting the Bench for condoning the delay in filing the present appeal. The reason for the delay in filing the appeal, as contained in the said application, are as under:—

"The appellant most respectfully begs to submit as under that: -

1. The appellant has received the CIT (Appeal) Orders dated 08/02/2024 for Assessment Years 2015-16, 2017-18, 2017-18 and 2018-19 by disallowing the claim of the appellant.

2. The learned Commissioner of Income Tax (Appeals)-3, Nagpur erred in dismissing the appeal by stating that the appellant has not made any submission to rebut the findings given by the AO, however, appellant has submitted the submission with supporting documents against each and every Notice of Hearing u/s 250 of the Income Tax Act, 1961 issued for hearings of appeal.

3. i. It is respectfully submitted that all the documents were given to Counsel D. S. Jogani, Advocate for filing the appeal, but, since the Counsel was not medically fit, he could not pursue the matter.

ii. The Counsel for the appellant D. S. Jogani, Advocate undergone for

Open Heart By Pass Surgery in the first week of March 2024 i.e. on 06/03/2024. And Doctors advised him to take Bed Rest for two months i.e. up to 06/05/2024. iii. And hence, Counsel for the appellant could not file the appeals in

time.

4. Thus, in the circumstances, the delay in filing the appeal is caused due to Counsel for the appellant D. S. Jogani, Advocate was medically unfit.

5. It is respectfully submitted that the delay is only for the very nominal period. There was neither any negligence on the part of the appellant nor was there any intention to delay the filing of appeal. There has never been any intention on the part of appellant to flout any legal provisions or legal formalities.

6. It is respectfully submitted that in case of Collector, Land Acquisition, Anantnag & Anr. Vs Mst. Katiji and others (1987) 2 SCC 107, (167 ITR 471) the Honorable Supreme Court has held that

i. The expression Sufficient Cause employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts.

ii. It was further held by the Honorable Supreme Court that such liberal approach is adopted on one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

iii. Another principle laid down by the Honorable Supreme Court is that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

iv. It was also held by the Honorable Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

7. It is respectfully submitted that the appellant is submitting the Application for Condonation of Delay along with the Appeal Memo in Form No. 36 here with. In view of above facts, it is respectfully submitted that all these aspects viewed as a whole constitute sufficient cause for condoning of delay in filing the appeal and appellant had prevented by sufficient cause from submitting the appeal in time. In view of above facts and circumstances of the case, it is humble prayer that delay kindly may be condoned in the Interest of Justice and kindly admit the appeal for the sake of principal of the natural justice.

PRAYED ACCORDINGLY"

3. After considering the averments made in the application, we are of the opinion that the assessee is prevented in filing the appeal belatedly and we

are satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, we condone the delay of 40 days in filing the present appeal and admit the same for adjudication on merit.

4. When this appeal is taken up for hearing, none appeared on behalf of the assessee. While going through the material available on record, we find that the learned CIT(A) passed an ex-parte order without adjudicating the issues on merits raised by the assessee.

5. On the other hand, the learned D.R. submitted that despite the learned CIT(A) provided sufficient opportunities to the assessee, however, the assessee did not appear before the learned CIT(A) and not furnished relevant details. He strongly supported the orders passed by the learned CIT(A).

6. We have heard the learned Departmental Representative and perused the materials available on record and gone through orders of the authorities below. We find that though the learned CIT(A) granted opportunities to the assessee to substantiate its case, ultimately, the order passed by him is an ex-parte order. Therefore, we are of the opinion that by following the principles of natural justice, one opportunity should be given to the assessee to substantiate the case before the learned CIT(A). In view of the above, the order passed by the learned CIT(A) is set aside and remit the matter to the file of the learned CIT(A) and direct him to adjudicate the matter afresh on merit and in accordance with law after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not

seek adjournment without there being a justified reason. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

7. 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