

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.283/Nag./2024
(Assessment Year : 2013-14)

Purshottam Narayanrao Jadhao
C/o Naresh Dayaram Meshram
Plot no.14, Shneh Nagar
Behind Bus Stop, Mouda 441 104
PAN – AEQPJ8051C

..... Appellant

v/s

Income Tax Officer
Ward-3(4), Nagpur

..... Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 02/12/2024

Date of Order – 12/12/2024

ORDER

PER V. DURGA RAO, J.M.

Aforesaid appeal by the assessee is against the impugned order dated 30/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2013-14.

2. The assessee has raised following grounds:-

"1. Whether on the facts and in law, the order passed by learned CIT(A) u/s 250 of the Act is bad in law.

2. Whether on the facts and in law, the learned CIT(A) erred in dismissing the appeal without providing adequate opportunity of being heard, thereby breaching principles of natural justice.

3. *Whether on the facts and in law, the learned CIT(A) erred in not appreciating the fact that, the assessee had prepaid tax credit available in the form of TDS credit, which was sufficient to cover the tax liability on the business income, as per the audited financial statements.*

4. *Whether on the facts and in law, the learned AO erred in levying penalty under section 271(1)(c) of Rs.15,48,196/-.*

5. *The Assessee craves to add, alter, vary, omit, amend, or delete one or more of the above grounds of appeal before, or at the time of, hearing of the appeal, to enable the Hon'ble Tribunal to decide this appeal according to law."*

2. During the course of hearing, the Registry has pointed out a delay of 21 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 Affidavit sworn on 19/04/2024, 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 affidavit, are as under:—

"Sufficient Cause explaining the delay in filing the Appeal

C. That the order was passed by learned CIT(A) on 30.01.2024. That the order was uploaded in the IT portal and presumably sent to registered email id. However, the email-id was not in use and hence, copy of order was remained to be brought to the notice of the assessee in a timely manner. Thus, appeal was dismissed by learned CIT(A) but the fact was not brought to the notice of the assessee. The assessee was not aware about the passing of any appellate order.

D. The assessee being a labour contractor was always engaged at the site for supervision of labour and did not have any fixed place of business. The address of the assessee registered with IT portal was also changed and hence no notices could be received. The assessee was not used to working on internet for accessing IT portal and checking e-mails etc. The assessee submits that, he is a lay man and not much literate and does not understand the intricacies of taxation laws and the system-based process of assessment.

E. Subsequently, the assessee's tax consultant checked the Income-tax portal. It was only then; the consultant apprised the assessee about passing of appellate order. The assessee immediately thereafter, consulted a legal Counsel to file an appeal against learned CIT(A) order. The assessee briefed the counsel and provided all relevant documents. That Counsel drafted the appeal and sent papers to the assessee for signature.

F. The assessee prays that, the delay of 21 days be condoned in light of aforesaid circumstances. That there was no malafide intention on assessee's part for delay in filing the appeal. In view of above it is submitted that there was a bonafide lapse in delay in filing the appeal before your Honour.

Hence, there is an unintentional delay in filing the appeal before your Honour. By delaying the filing of appeal, no undue benefit or advantage is taken by the assessee. Accordingly, in the interest of justice, the assessee wishes to challenge the assessment order passed by the learned CIT(A) by way of appeal filed before your Honour with a request for condonation of delay.

In view of this, it is prayed that the delay of just 21 days may kindly be condoned in order to render the justice."

3. After considering the submissions of the learned Authorised Representative and averments made in the affidavit, 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 21 days in filing the present appeal and admit the same for adjudication on merit.

3. When this appeal is taken up for hearing, the learned A.R. appearing for the assessee submitted that the learned CIT(A) passed an ex-parte order and prayed that one opportunity may be granted by restoring the matter to the file of the learned CIT(A) to enable the assessee to substantiate its case before the learned CIT(A).

2. 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).

3. We have heard both the parties, 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.

4. 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