

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" BENCH, MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER
ITA No.4628/M/2024
Assessment Year: 2018-19

Depto Roy 1103, C Wing, Tower I, Ashok Gardens, T J Road, Sewree Mumbai, Kalachowki S.O., Mumbai- 400033. PAN: AIKPR5472P	Vs.	Deputy Commissioner of Income Tax, Circle 16(2) Aayakar Bhawan, Mumbai.
Appellant	:	Respondent

Present for:

Assessee by

: Ms. Lakshmi Menon

Revenue by

: Shri. R. R. Makwana, SR. D.R.

Date of Hearing

: 04.11.2024

Date of Pronouncement

: 17.12.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated 11.07.2024 passed by NFAC Delhi for assessment year 2018-19 on following grounds of appeal:



- A. *“The orders of the lower authorities in so far as they are against the Appellant are opposed to law, facts and circumstances of the case.*
- B. *The Appellant is a diligent tax payer and it was because of the circumstances he was in that could not file returns pursuant to the notice under section 148 and co-operate in the proceedings. There was no willful negligence, defaults, lapses or laches on the part of the Appellant, and the failure to file returns and other details was due to reasons beyond the control of the Appellant.*
- C. *The Appellant begs to submit that he has been diligently filing the return of income since the inception of his practice.*
- D. *Therefore, it is evident that the Appellant have always been diligent in discharging his tax liability and that this lapse was on account of the special circumstances he was in and which were beyond his control.*
- E. *During the financial year 2017-18 pursuant to assessment year 2018-19 which is under consideration here, the Appellant has earned a Net Taxable income of Rs.35,76,290.*
- F. *The tax payable as per above computation with interest upto April 2023 (being the date of payment of tax paid during the first appeal) amounts to Rs. 18,61,725/-. Whereas the appellant has already remitted Rs.25,00,000/- on 8th April, 2023 as Self-Assessment Tax. Therefore, the entire tax liability for assessment year 2018-19 stands discharged.*
- G. *The Assessing Authority has grossly erred in making various additions under Sections 69 and 69C on the basis of mere conjectures and surmises. The investments and expenditures have been made by the Appellant through his bank account are out of his past savings and income earned during the assessment year 2018-19.*
- H. *The Assessing Authority has erred in treating the purchase of a motor vehicle for Rs.57,96,000/-as undisclosed expenditure under section 69C of the Act. The said motor vehicle has been purchased out of past savings and income earned by the Appellant during assessment year 2018-19 and was also financed by the Appellant by obtaining an external bank finance hence, cannot be considered as unexplained expenditure under section 69C.*
- I. *The Assessing Authority has failed to appreciate the fact that investments in fixed deposit to the tune of Rs.30,00,000/- has been made out of past savings and income earned by the appellant during the assessment year 2018-19. Therefore, the addition of Rs.30,00,000/- under Section 69 requires to be set aside.*

- J. The Assessing Authority has also erred in considering the investments made in HDFC mutual funds and Axis Mutual funds totaling to Rs.20,00,000/- as undisclosed investment under section 69 of the Act. The said investment was made out of past savings and income earned by the appellant during the assessment year 2018-19. Hence, the addition of Rs.20,00,000/- requires to be set aside.
- K. The Assessing Authority has further erred in treating the credit card payments to extent of Rs. 21,61,830/- as undisclosed expenditure. The credit card payments have been made out of past savings and income earned by the appellant during assessment year 2018-19. Therefore, the addition of Rs.21,61,830/- made under section 69C of the Act also requires to be set aside.
- L. The Ld. Appellate Authority ought to have considered the adjournment requests submitted by the Appellant's Chartered Accountant during the course of the appeal.
- M. Additionally, even pending the Appeal, the Appellant had remitted Rs.25,00,000/- as payment of taxes for the assessment year 2018-19 on 8th April 2023, which demonstrates the appellant's bonafides.
- N. The Ld. Appellate Authority should not have issued the appellate order with undue haste. The appellate order passed without granting sufficient opportunity to the Appellant to present their case is arbitrary and violative of the principles of natural justice.
- O. In light of the above, the impugned order is liable to be set aside and to remit the matter back to the Assessing officer to enable the Appellant to participate in the determination of the correct tax payable.
- P. The Appellant craves leave to urge additional grounds and make additional submissions, to modify, alter the grounds at the time of hearing.”

Brief facts of the case are as under:

2. It is submitted that assessee is a lawyer by profession and has always been a diligent tax payer. For the year under consideration the assessee handed all over the necessary document to CA for filing the return of income. However, it is only when the assessee received notice u/s. 148 on 27.09.2022 it came to his knowledge

that, no returns were filed for the year under consideration. The reassessment notice was issued to verify substantial investments in financial instruments made by the assessee during the year under consideration.

2.1. It is submitted that, during the time of proceedings before the Ld.AO, assessee was held up with his father medical issues as the father underwent surgery that required necessary support and assistance from assessee. In support, medical bills are placed at page 6-10 of paper book filed before this *Tribunal*. It was under such circumstances that, the assessee could not even represent before the Ld.AO and the reassessment order was passed on 10.03.2023 making addition in the hands of the assessee amounting to Rs.1,31,07,830/-

Aggrieved by the order of the Ld.AO assessee preferred appeal before the Ld.CIT(A) with a request to remand the issue to the Ld.AO to fresh adjudication.

3. The Ld.CIT(A) rejected the appeal on the ground that assessee did not respond to the notice of hearing sent on the e-portal.

Aggrieved by the order of the Ld.CIT(A) the assessee filed appeal before this *Tribunal* with a delay of one day.

4. Considering the smallness of the delay the Ld.DR did not object to the condonation petition in filing appeal before this *Tribunal*.



Accordingly we condone the delay of one day in filing the appeal before this Tribunal.

On merits of the additions made we note that no necessary verification was carried out due to inability on behalf of the assessee to represent his case. In the interest of justice we are of the opinion that the appeal deserves to be remanded back to the Ld.AO to carry out necessary verification of the issues based on the evidences filed by the assessee in accordance with law. Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly the grounds raised by the assessee stands allowed for statistical purposes.

In the result the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 17-12-2024.

**Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER**

**Sd/-
BEENA PILLAI
JUDICIAL MEMBER**

Place: Mumbai,

Dated: 17.12.2024

Snehal C. Ayare, Stenographer

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Ld.DR, ITAT, Mumbai
4. Guard File
5. CIT



//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai