

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.1759/Kol/2024

Assessment Year: 2016-17

Suman Gandhi.....Appellant

E-24/7, Karunamoyee,
Sech Bhawan, Salt Lake,
Kolkata – 700091.

[PAN: AXCPG3145R]

vs.

ITO, Ward-36(2), Kolkata..... Respondent

Appearances by:

Shri Anil Kochar, AR, appeared on behalf of the appellant.

Shri S. B. Chakraborty, Addl. CIT and Somnath Das Biswas, Sr. DRs, appeared on behalf of the Respondent.

Date of concluding the hearing : December 18, 2024

Date of pronouncing the order : December 23, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.06.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Brief facts of the case are that the Assessing Officer initiated proceedings u/s 147 of the Act for the assessment year 2016-17 based on the information received from ADIT(Inv.), Unit-5, Kolkata, wherein, it was observed that the assessee had claimed income from investment of shares and loans for earning interest, insurance commission and tuition fees. The Assessing Officer during the assessment proceedings noticed that the assessee sold 20,000 and 29,720 number of shares of Grapco Mining Ltd. and Patheja Forgings Ltd. respectively had been sold in physical form during the year for Rs.2,00,000/- and Rs.2,97,200/-

respectively to Shree Shyam Trading. The Assessing Officer concluded that these transactions were accommodation entries and not a genuine one and he added Rs.4,97,200/- to the total income of the assessee.

3. Dissatisfied with the above order, the assessee filed an appeal before the ld. CIT(A). However, the ld. CIT(A) dismissed the appeal primarily on technical ground by rejecting condonation of delay of 201 days in filing the appeal before the ld. CIT(A).

4. Aggrieved, the assessee filed the appeal before this Tribunal. The ld. AR contended before the Bench that the ld. CIT(A) despite rejecting the condonation of delay also proceeded to examine the issue and decided the appeal on merits of the case, which is not permissible under the law. He further argued that the delay in filing the appeal was due to Covid-19 pandemic which can be considered as a valid ground for condonation of the delay. The ld. AR further contended that the ld. CIT(A) erred in rejecting the condonation of delay and simultaneously decided the appeal on merit, which cannot be permitted under the provisions of law. He stated that law provides that the ld. CIT(A) cannot decide on merit of a case without first condoning delay in filing appeal but in this case, condonation of delay was rejected then merit of the case was addressed.

5. On the other hand, the ld. DR could not controvert the facts as stated above by the ld. AR before the Bench and simply supported the orders of the authorities below.

6. We, after hearing the rival submission of the parties and perusing the materials available on record, find that the ld. CIT(A) without condoning the delay of 201 days decided the appeal on merits of the case, which is not permissible under the law. Law clearly speaks that the ld. CIT(A) should first require to condone a delay and then to

proceed to decide appeal on merits. We note that this is a procedural irregularity on the part of the ld. CIT(A) which can be rectified. Therefore, we remand back the whole issue to the file of the ld. CIT(A) after condoning the delay of 201 days in filing the appeal before the ld. CIT(A) and direct the ld. CIT(A) to decide the issue on the merits of the case after providing due opportunity of being heard to the assessee. We also direct the assessee to comply with the notices issued by the ld. CIT(A).

7. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 23rd December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 23.12.2024.

RS

Copy of the order forwarded to:

1. Suman Gandhi
2. ITO, Ward-36(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches