

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1327/Kol/2023
Assessment Year: 2017-18

Chhotelal Ram (PAN: BOPPR 0446 M)	Vs.	ITO, Ward-3(1), Malda
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	09.12.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	19.12.2024
For the assessee / निर्धारिती की ओर से	Shri Miraj D Shah, A. R
For the revenue / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT, Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 28.08.2023 for the AY 2017-18.

2. At the outset, the Id. Counsel for the assessee submitted that there is a delay of 38 days in filing the appeal. Therefore, the Id. Counsel for the assessee filed an Affidavit which is extracted as under:

"1. That the appeal filed by the assessee company before the Commissioner (Appeals), NFAC was disposed of by order dated 28.08.2023 passed by Commissioner (appeals), NFAC.

2. That the time for filing of the appeal before the Tribunal was to expire on 27.10.2023.

3. That there is a delay in filing this appeal because the counsel to whom the appellate order was given for filing had fallen sick and because of his illness the appeal was not filed within the due date.

4. In light of above circumstances, it is requested before your lordship to condone the delay in the present case as the circumstances were beyond the control of the assessee company.

5. That the memo of appeal has been filed on 01.12.2023 in the office of the Tribunal."

Keeping in view, the settled law that the case should be decided on merit not on technical basis as well as going over the condonation petition, the delay is hereby condoned.

3. Brief facts of the case of the assessee are that the case of the assessee was selected for scrutiny for the AY 2017-18 on the issue of cash deposit during demonetization period and AO after considering the facts, assessed the total income of the assessee at Rs. 96,25,466/-.

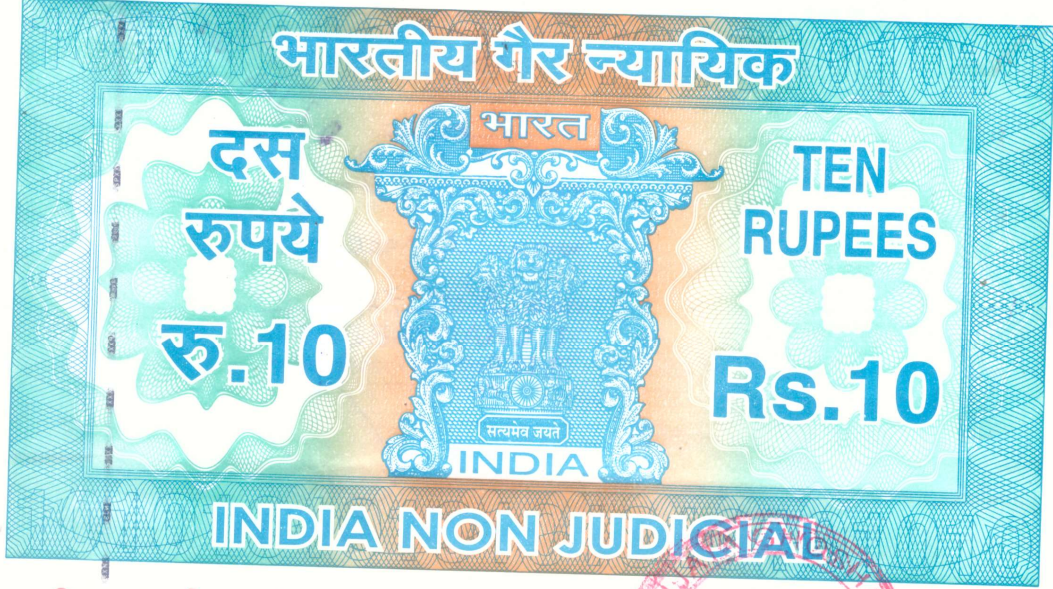
4. The said order has been challenged before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed on account of non-prosecution.

Being aggrieved and dissatisfied the assessee has preferred the instant appeal.

5. The Ld. Counsel for the assessee instead of entering into merit of the case has submitted that the assessee has been given an opportunity to place his case before the Ld. CIT(A). Assessee has sworn an Affidavit to show his bonafide with regard to non-appearance of the assessee before the Ld. CIT(A).

6. Contrary to that the Ld. D.R supports the impugned order.

7. We have gone through the order passed by Learned CIT(A) and finds that the appeal of the assessee has been dismissed for non- prosecution. The affidavit filed by the assessee is as below –



পশ্চিমবঙ্গ পশ্চিম বঙ্গাল WEST BENGAL
AFFIDAVIT

I **Chhotelal Ram**, Son of **Late Gangadaya Ram**, residing at **Tulshihata, Malda-732140**, West Bengal having PAN no. **BOPPR0446M** do hereby solemnly declare and affirm as follows:

1. That all communications related to my case was sent on the registered mail ID i.e. **babashayam912@gmail.com**. The same was accessed and managed by my accountant. The said accountant had left the Job and did not give access to the undersigned.
2. That due to non-access of the Mail the notices issued for hearing by the Hon'ble CIT(A), NFAC remained non-complied.
3. That the non-compliance was not due to any malafide intention but due to the above stated reasons.
4. That whatever is declared herein above is true to the best of my knowledge and belief.

Solemnly declared and affirmed by the declarant on this 18th Day of March, 2024.



Identified by me
Chhatrapati Chakraborty
Advocate

SOLEMNLY AFFIRMED AND DECLARED
BEFORE ME ON IDENTIFICATION

S. Ghosh

NOTARY

18 MAR 2024

CHHOTELAL
L RAM
Chhotelal Ram

SUJATA GHOSH DAS
Notary Govt. Of WB

8. Considering the submission, order passed by the CIT(A) and affidavit, we are inclined to give an opportunity to the assessee to place his case before the CIT(A). Accordingly, order passed by CIT(A) is hereby set aside. Record of the assessee is restored in the file of CIT(A) for fresh adjudication. CIT(A) is directed to pass a fresh order after hearing the assessee.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 19th December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 19th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Chhotelal Ram, Tulshihata, Harischandrapur, Malda-732140
2. Respondent – ITO, Ward-3(1), Malda
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata