



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA Nos.536 & 537/CTK/2024
Assessment Years : 2013-14 & 2017-18

Kamyab Television Pvt. Ltd., Plot No.159, Alaka Unit-II, Ashok Nagar, Bhubaneswar	Vs.	DCIT, Corporate Circle-1(1), Bhubaneswar
PAN/GIR No AAECM 3608 B		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, Adv
Revenue by : Shri Saroj Kumar Dubey, CIT DR & S.C.Mohanty, Sr DR

Date of Hearing : 31/12/2024
Date of Pronouncement : 31/12/2024

ORDER

Per Bench

ITA No.536/CTK/2024 is an appeal filed by the assessee against the order of Id CIT(A)-1, Bhubaneswar dated 3.8.2018 in Appeal No.0422/16-17 for assessment year 2013-14. ITA No.537/CTK/2024 is the appeal filed by the assessee against the order of Id CIT(A), NFAC, Delhi dated 26.11.2024 in Appeal No.NFAC/2016-17/10154919 and for the assessment year 2017-18 in the matter of assessment under section 144 of the Act.

2. Shri P.R.Mohanty, Id AR appeared for the assessee and Shri Saroj Kumar Dubey, Id CIT DR and S.C.Mohanty, Id Sr DR appeared for the revenue.

3. The appeal in ITA No.536/CTK/2024 for the assessment year 2013-14 is time barred by 2262 days. The assessee has filed condonation petition supported by affidavits, wherein, the reason stated in not filing the appeals on time is that due to online service of notice, consequential orders and non-verification or inaction or misdemeanor i.e. latches & lapses of the authorized representative of the assessee, the appeal could not be filed, which is neither intentional nor deliberate but due to unfortunate and unavoidable circumstances beyond the control of the appellant. Ld AR of the assessee submitted that the delay in filing of appeal is attributable to online compliance of faceless regime. Ld AR submitted that the delay in filing of appeal may be condoned.

4. In respect of ITA No.537/CTK/2024 for the assessment year 2017-18, Id AR submitted that the Id CIT(A) has not condoned the delay in filing of appeal and dismissed on that count only. He submitted that notice of for submitting the reasons for condonation of delay was provided in the email address of the assessee. As the same was not known to the assessee, the assessee did not reply to the said notice, which was a ground for not condoning the delay. It was his submission that the delay in filing of the appeal before the Id CIT(A) may be condoned.

6. It was submitted by Id AR that for the assessment year 2013-14, all the materials required for adjudication of the appeal were not produced, therefore, the Id CIT(A) has passed the order by giving part relief. It was his prayer that both the appeals of the assessee be restored to the file of the Assessing Officer for fresh adjudication of the issues in the matter on merit emphasizing the need of providing adequate opportunity of hearing.

7. In reply, Id Sr. Departmental Representative vehemently objected to the submissions of the learned Counsel for the assessee and argued that the appeal filed by the assessee for the assessment year 2013-14 was not maintainable due to abnormal delay. Ld Sr DR also submitted that for the assessment year 2017-18, the assessee failed to furnish sufficient cause for the substantial delay in filing appeal before the Id CIT(A) and, therefore, the learned CIT(A) was justified in not condoning the delay in filing the appeal and dismissed the same in limine.

8. We have considered the rival submissions and perused the material available on record. It is crystal clear that the delay of 886 days in filing of appeal before the Id CIT(A) for the assessment year 2017-18 was not condoned, as no sufficient cause was shown under section 249(3) of the Act for the failure to file the appeal within the prescribed period of limitation as contained under section 249(2) of the Act r/w section 5 of the Limitation Act, 1963. While going through the material available on record, we find

that the assessee has satisfactorily explained the cause of delay due to the fact that the notice was sent on email address only and there was no physical notice, for which, no explanation was furnished by the assessee for condoning the delay before the first appellate authority. In our considered opinion, such delay needs to be condoned, because the assessee was vigilant and was pursuing its legal rights in right earnest.

9. As regards to other appeal for the assessment year 2013-14, due to non-verification of income tax portal, the appeal order was not in the knowledge of the assessee. For this proposition, the assessee has filed affidavit. When technicality is pitted against substantial justice, technicalities are always step down and substantial justice should prevail. This being so, in the interest of justice, the delay in filing of the appeal before the Tribunal is condoned.

10. We find that for the assessment year 2013-14, as the assessee has failed to produce books of account and bills & vouchers, Id CIT(A) has restricted the disallowance to 50% of the total claim made by the assessee in respect of provision of section 115JB of the Act and the addition under the head "other expenses", the total claim was rejected. It was the submission of Id AR that the assessee can produce all the bills and vouchers if one more opportunity is granted.

11. In view of forgoing discussions, we set aside the impugned orders passed by the learned CIT(A) and restore the entire matter to the file of the learned Assessing Officer and direct him to re-adjudicate the issues on merits after providing adequate opportunity of hearing to the assessee subject to cost of Rs.5,000/- (Rupees two thousand only) each to be deposited within 60 days from the date of this order under the head "others" in ITNS challan 280 in the Account No.500 and same is to be filed before the Id AO. In the event the cost is not paid, the orders passed by the Id CIT(A) and that of the AO would stand confirmed.

12. In the result, appeals of the assessee stand partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 31/12/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 31/12/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Kamyab Television Pvt. Ltd.,
Plot No.159, Alaka Unit-II, Ashok Nagar,
Bhubaneswar
2. The Respondent: DCIT, Corporate Circle-1(1),
Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, CUTTACK

