



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

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

ITA Nos.538 & 539/CTK/2024
Assessment Year 2009-10

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| Kamyab Exports Pvt Ltd.,Plot No.301, Royal Height Apartment, Lane No.10, Jaydev Vihar, , Bhubaneswar | Vs. | DCIT, Corporate Circle-1(1), Bhubaneswar |
| PAN/GIR No.AACCK 5144 N | | |
| (Appellant) | .. | (Respondent) |

Assessee by : Shri P.R.Mohanty , Adv
Revenue by : Shri S.C.Mohanty, Sr DR

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

ORDER

Per Bench

ITA No.538/CTK/2024 is the appeal filed by the assessee against the order of Id CIT(A), NFAC, Delhi dated 15.3.2024 in Appeal No. NFAC/2008-09/10155871 for the assessment year 2009-10 in the matter of assessment under section 143(3) r.w.s 250 of the Act. ITA No.539/CTK/2014 is an appeal filed by the assessee against the order of Id CIT(A), NFAC, Delhi dated 15.3.2024 in the matter of penalty under section 271(1)(c) of the Act for the assessment year 2009-10.

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

3. In both the appeals, there is delay of 196 days. The assessee has filed condonation petitions 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. laches & lapses of the authorized representative of the assessee, the appeals 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 appeals is attributable to online compliance of faceless regime. Ld AR submitted that the delay in filing of appeals may be condoned.

4. In regard to ITA No.538/CTK/2024, the Id AR submitted that the Id CIT(A) has passed the exparte order without providing reasonable opportunity of hearing to the assessee and in regard to ITA No.539/CTK/2024, Id AR submitted that the penalty has been levied u/s.271(1)(c) of the Act in respect of exparte order passed by the CIT(A). He prayed that both the appeals be restored to the file of the Assessing Officer for fresh adjudication after providing opportunity of hearing to the assessee.

5. In reply, Id Sr. Departmental Representative vehemently objected to the submissions of the learned Counsel for the assessee and argued that the appeals filed by the assessee were not maintainable due to abnormal delay. Ld Sr DR also submitted that 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 appeals and dismissed the same in limine.

6. We have considered the rival submissions and perused the material available on record. We observe that Id CIT(A) has passed exparte order without providing reasonable opportunity of hearing to the assessee. The penalty order u/s.271(1)(c) for the assessment year 2009-10 has also been passed as no compliance was made by the assessee before him. It is stated by Id AR of the assessee that due to non-verification of income tax portal, the appeal orders were 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 appeals before the Id CIT(A) is condoned and the issues in the appeals on merits are restored to the file of the Id AO for adjudication on merits 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.

7. 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