

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2924/MUM/2024
(A.Y. 2017-18)**

Nandkishor Mahadeo Banchhode A 102 Balaji Towers, Sector 30, Pot 29, Vashi, Navi Mumbai, Maharashtra-400705	v/s. बनाम	ITO 28(2)(3), Mumbai Room No. 310, 34rd Floor, Tower No. 6, Vashi Railway Station, Commercial, Vashi, Navi Mumbai, Maharashtra-400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAIPNB1866D		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	None
Respondent by :	Ms. Usha Gaikwad

Date of Hearing	15.10.2024
Date of Pronouncement	12.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 17.09.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2017-18.

2. The assessee has raised following grounds of appeal:

“1.The learned Commissioner of Income tax (Appeal) NFAC was not justified in passing exparte order without appreciating that appellant have duly

submitted his reply on delay as well as on merit before the due date of notice and thus order was passed on wrong facts.

2. The learned Commissioner of Income tax (Appeal) NFAC was not justified in dismissing the appeal on the ground of delay without properly appreciating the facts of the case as on the facts and circumstances of case the appellant have duly filed the appeal on 10.01.2020 and another appeal was filed as a precautionary measure since the appeal challan in the earlier appeal was paid in wrong assessment year and this fact was duly given in the form 35 and appellant have also enclosed the earlier form 35 along with the second appeal which was preferred on 27.08.2022 as a precautionary measure and thus if this fact was considered properly there was no delay in filing the appeal

3. The learned Commissioner of Income tax (Appeal) NFAC was not justified in dismissing the appeal on the ground of delay without appreciating that appellant is an NRI and most of the period he was out of India and there was reasonable cause in filing the appeal with delay as he was not conversant with the income tax law and second appeal on the same issue was on misconception and due to ignorance of law.

4. The learned Commissioner of Income tax (Appeal) NFAC failed to appreciate that action of AO with regard to the addition of Rs.15,59,000 is on presumption as addition was made on the basis of bank account and bank account itself is self explanatory as appellant is a salaried employee and have made the withdrawal from the bank before the demonetization for renovation of house and same was deposited in bank account as these are not the legal tender after the demonetization and no finding on the debit entries was given in the assessment order.

5. The learned Commissioner of Income tax (Appeal) NFAC was not justified in confirming the addition of Rs.15,59,000 without appreciating that appellant is filing his return from last so many years and does not have any other source of income other than salary and addition cannot be made on presumption and assumption and when it was duly explained before lower authorities also along with the bank statement.

6. The learned Commissioner of Income tax (Appeal) NFAC was not justified in confirming the action of AO with regard to initiation of section 69A without appreciating that it is not an unexplained money and addition was made only on presumption and no application of mind was applied.

7. The learned Commissioner of Income tax (Appeal) NFAC was not justified in confirming the action of AO with regard to application of section 115BBE without appreciating that there is no undisclosed income and therefore application of section 115BBE is not applicable.”

3. The brief facts of the case are that the assessee had filed return declaring income of Rs. 12,79,530/- on 05.08.2017. The case was selected for scrutiny to verify cash deposited during the demonetization period. After considering the assessee's submissions, the AO passed the assessment order after making an



addition of Rs. 15,59,000/- u/s 69A of the Act on account of unexplained money.

4. Aggrieved with the said order, the assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee as inadmissible holding that there was total delay of 979 days, out of which only 717 days were covered by the order of the Hon'ble Supreme Court relating to extension of timelines during Covid Pandemic. Remaining delay of 262 days was treated as unexplained and therefore, the appeal was dismissed as inadmissible vide order dated 17.09.2023.

5. Aggrieved with the order of Ld. CIT(A), the assessee has filed an appeal before us. We have considered the material available before us. It is seen that the appeal before Ld. CIT(A) had been initially filed on 10.01.2020, however, the challan for appeal was made for wrong assessment year. Accordingly, the assessee filed another appeal on 27.08.2022 as a precautionary measure. It is further observed that the assessee was an NRI during the most of the period under consideration, as such there was reasonable cause for filing of the appeal with delay.

Considering the facts and circumstances of the case, we, hereby, condone the delay in filing of appeal before Ld. CIT(A). As Ld. CIT(A) has not gone into merits of the issue, we deem it proper to restore the matter to the file of Ld. CIT(A). He is directed to decide the appeal on merits after giving due



opportunity to the assessee. The assessee is also directed to make requisite compliance before Ld. CIT(A).

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

Order pronounced in the open court on 12.11.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 12.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

