



IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.45/GTY/2024
Assessment Year : 2017-18

Suman Ahmed, C/o. Dulal Uddin Ahmed, Khudimari PS Gauripur, Dhubri 783 331, Assam PAN : AJQPA4575K	V/s	ITO, Ward-Dhubri
Appellant		Respondent

Assessee by	:	Shri Kushal Soni
Revenue by	:	Shri Soumendu Sekar Das
Date of hearing	:	19.11.2024
Date of pronouncement	:	20.01.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal pertaining to Assessment Year 2017-18 at the instance of assessee is directed against the order dated 12.12.2023 passed by National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') which in turn is arising out of Assessment Order



dated 22.03.2022 passed u/s.147 r.w.s.144 r.w.s.144B of the Act.

2. Briefly stated, the facts of the case are that the assessee is an individual who did not file the return of income for the A.Y. 2017-18. Based on the information that the assessee has deposited huge cash of Rs.2,64,73,440/- in bank accounts during the demonetization period, the case was reopened by issuance of notice u/s.148 of the Act. Pursuant to notice u/s.148, the assessee filed the return of income on 30.05.2021 declaring total income of Rs.4,97,751/-. Statutory notices u/s.143(2)/142(1) were served on the assessee requiring him to submit the nature of income received, details of purchases made rent etc. with documentary evidences. The assessee neither complied with notices u/s.143(2)/142(1) nor to the notice issued u/s.144 of the Act. In the circumstances, the Assessing Officer was constrained to pass best judgment assessment u/s.144 making addition of cash deposit of Rs.2.64 crore as unexplained money u/s.69A of the Act and invoked provisions of section 115BBE of the Act.

3. Aggrieved assessee preferred appeal before the ld.NFAC but with a delay of 98 days. The ld. NFAC dismissed the appeal *in limine* without condoning the delay.



4. Now the assessee is in appeal before the Tribunal challenging the impugned order.

5. We have heard both the parties and perused the record placed before us. A perusal of impugned order would reveal that the ld. NFAC dismissed the appeal *in limine* without condoning the delay of 98 days. While doing so, the ld. NFAC in para No.5.2 of the order held as under :

“Further, the assessment proceedings were mandatorily required to be conducted through the e-Proceedings Portal of the ITBA only, during the relevant period. Therefore, the service of notice/order through the ITBA is a valid mode of service, by itself, and there is no requirement in law to follow it up with a service by post. On these facts, it is not open to the appellant to take a stand in the appellate proceedings that he failed to comply with the notice, or failed to prefer appeal in time against the assessment order, as the same was not served upon him by post or manually.”

6. We note that the assessee attributed the reasons by stating that the assessee is having business as an agency of Petrol and Diesel outlet of Indian Oil Corporation Ltd. in the name of M/s. Dulal Sales & Service Station; most of the time he would be out of station on site work; his staff has overlooked the mails; he is completely unaware of the Faceless Assessment; and therefore he was unaware of the notices of hearing which resulted in delay of filing the appeal. In this context, we would like to quote the judgment of Hon'ble Supreme Court in the case of *Collector Land Acquisition Vs. MST Katiji (1987) 167 ITR 471*



SC . In the said Judgment, their Lordships have given certain principles based on which, the issue with regard to the delay can be approached and the said portion of the order of the Judgment cited supra is reproduced hereunder:

1. *Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
6. *It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

6.1 The Hon'ble Jurisdictional High Court in the case of *Vijay Vishin Meghani vs. DCIT, 389 ITR 250 (Bom.)* has held that in the matter of condonation of delay an overall view in the larger interest of justice has to be taken. None should be deprived of



an adjudication on merits unless the Court of law or the Tribunal/Appellate Authority finds that the litigant has deliberately and intentionally delayed filing of the appeal, that he is careless, negligent and his conduct is lacking in bonafides.

7. So far as the ld. NFAC observations in para 5.2 that service of notice/order through the ITBA is a valid mode of service, we would like to quote the decision of Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provisions of 282(1) held that service of notice through ITBA portal is not valid service and remanded the matter to AO for *denovo* disposal of case. The relevant paragraphs of the judgment are reproduced below :

“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :

.....

.....

8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the



Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.

9. *Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.*

10. *In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16, 2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks."*

7.1 In view of the above legal position, we are of the considered opinion that proper notice(s) of hearing were not served properly to the assessee as specified under the provisions of section 282(1) of the Income-tax Act, 1961 Act and Rule 127(1) of the Income-tax Rules, 1962.

8. In the light of above discussion and applying the principles enunciated in the above judgments, we are of the firm opinion that delay of 98 days in filing of appeal before Id.CIT(A) deserves to be condoned. We therefore condone the delay of 98 days before the Id.NFAC. In view thereof, without dwelling into merits of the case, the issues on merits are being remitted back to the file of Id. NFAC for *denovo* adjudication after affording



reasonable opportunities to the appellant, in accordance with law after duly considering the paper book running into 223 pages filed before us. If necessary, the ld. NFAC may call for the remand report from the Jurisdictional Assessing Officer and obtain the objections from the assessee to such remand report and decide the case. The assessee is at liberty to file any new additional evidence other than those placed before us in the paper book in support of his claim as deemed expedient. The assessee is also directed to remain vigilant and not to take adjournment unless otherwise required for reasonable cause, failing which the ld. NFAC shall be free to proceed in accordance with law. Finding of the ld. NFAC is set aside and Grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced on this 20th day of January, 2025.

Sd/-

(MANOMOHAN DAS)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक / Dated : 20th January, 2025

Satish



ITA No.45/GTY/2024
Suman Ahmed

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “, Guwahati” बेंच,
/ DR, ITAT, Guwahati Bench
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar