

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH : NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA.No.580/NAG./2024 [E-APPEAL]
Assessment Year 2013-2014

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| Arun Pandurang Adhale, Plot No.143, Bajaj Nagar, NAGPUR – 440 010 PAN BFOPA7843H Maharashtra. | vs. | The Income Tax Officer, Ward-1 (1),RTTC BSNL Bldg., Near Balaji Mandir, Seminary Hills, NAGPUR. PIN – 440 006.Maharashtra. |
| (Appellant) | | (Respondent) |

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| For Assessee : | MS. Alfiya Rozie, C.A. |
| For Revenue : | Shri Abhay Y. Marathe, Sr. DR |

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| Date of Hearing : | 28.01.2025 |
| Date of Pronouncement : | 04.02.2025 |

ORDER

PER V. DURGA RAO, J.M. :

This appeal has been filed by the assessee against the order dated 12.09.2024 of the learned CIT(A)-National Faceless Appeal Centre [in short “NFAC”], relating to assessment year 2013-2014.

2. Facts of the case, in brief, are that the assessee is an individual and did not file his return of income for the impugned assessment year 2013-2014. As per the information available with

the Department, the assessee has sold immovable property valued at Rs.30 lakhs or more. Therefore, the Assessing Officer initiated proceedings u/sec.147 of the Act and issued statutory notices u/sec.148 and 142(1) of the Act along with questionnaires. Further, the Assessing Officer also called for information u/sec.133(6) of the Act from the Sub-Registrar No.4, Raghuji Nagar, Nagpur with respect to the sale of impugned property. In response to the notice, the assessee submitted that the assessee along with his brother Mr. Vijay Adhale sold the immovable property at Plot No.143, Layout at Shivraj Coop. Housing Society Ltd., Nagpur to Shri Anil Sawarkar and Ganesh Gudhade for a total consideration of Rs.1 crore. The borrowers of the said property has issued two cheques for Rs.50 lakhs each. However, the cheque issued in favour of his brother Mr. Vijay Adhale was returned by the Bank of India due to insufficient funds and, therefore, the sale deed got cancelled on the suit instituted by the assessee along with his brother vide decree dated 31.07.2017 with a direction that the assessee shall refund the sum of Rs.50 lakhs received from the borrowers. As such, it is the submission of the assessee that the impugned sum of Rs.50 lakhs is not at all belonged to her and it is not his income. He, accordingly,

submitted that the proposed addition be deleted. However, the Assessing Officer was not satisfied with the explanation offered by the and the decree produced by him and made the impugned addition of Rs.50 lakhs on the ground that the assessee had encashed the cheque and not shown the said income in his return of income. Accordingly, the Assessing Officer passed ex-parte assessment order dated 16.03.2022 u/sec.147 r.w.s.144 r.w.s.144B of the Act.

3. Aggrieved by the order of the Assessing Officer/National Faceless Assessment Centre, Delhi, the assessee carried the matter in appeal before the learned CIT(A) with a delay of 229 days duly explaining the reasons. However, the learned CIT(A) was not satisfied with the reasons furnished for the delay of 229 and dismissed the appeal of the assessee by not condoning the delay.

4. Aggrieved by the order of the learned CIT(A), the assessee is in appeal before the Tribunal.

5. Learned Counsel for the Assessee, during the course of hearing, submitted that the assessee the Assessing Officer made the impugned addition of Rs.50 lakhs in the hands of assessee despite furnishing sufficient documentary evidence to the effect that as per the decree of the Civil Court the amount has to be refunded to the

borrowers and as such, the amount of Rs.50 lakhs received by the assessee is not of his income as the same has to be refunded to the borrowers by virtue of cancellation of sale deed by the Civil Court. And during the course of appellate proceedings before the learned CIT(A), the learned CIT(A) without deciding the issue on merits, dismissed the appeal of assessee on account of delay in filing the appeal. He, therefore, submitted that one more opportunity may please be provided to the assessee by condoning the delay of 229 days in filing the appeal before the learned CIT(A) to substantiate his case in the larger interest of justice.

6. The Learned DR on the other hand, relied on the orders of the lower authorities and strongly opposed for condonation of delay.

7. I have heard the arguments of both the sides and perused the material on record. I find that the learned CIT(A) has dismissed the appeal of assessee on the ground of delay but not decided the appeal on merits as contemplated u/sec.250(6) of the Act, according to which, the learned CIT(A) has to give reasons for decision and adjudication thereof. In this connection, I note that the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) has held that when substantial justice

and technical considerations are pitted against each other, 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. It has further been held that 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. In view of the above decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST Katiji (supra) and considering the submission of the assessee and in the facts and circumstances of the case, I deem it fit and appropriate to condone the delay of 229 days in filing the appeal before the learned CIT(A) and direct the learned CIT(A) to decide the appeal on merits, by affording adequate opportunity of being heard to the assessee. Accordingly, the grounds raised by the assessee are allowed for statistical purposes. I hold and direct accordingly.

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

Order pronounced in the open Court on 04.02.2025.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Nagpur, Dated 04th February, 2025

VBP/-

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| 1. | The appellant |
| 2. | The respondent |
| 3. | The CIT(A), Nagpur concerned |
| 4. | The CIT, Nagpur concerned |
| 5. | The D.R. ITAT, Nagpur SMC-Bench, Nagpur |
| 6. | Guard File. |

//By Order//

True Copy

Sr. Private Secretary : ITAT : Nagpur Bench
NAGPUR.