

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR "SMC" BENCH : NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA.No.589/NAG./2024 [E-APPEAL]
Assessment Year 2020-2021

Rusibrai Rajendra Surana, 1, Kirti Medical Store, Main Road, MADHELI CHANDRAPUR -442 910. Maharashtra. PAN CTTPS0679D	vs.	The Income Tax Officer, Ward-2, CHANDRAPUR – 442 910. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri K.P. Dewani, Advocate
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

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 21.10.2024 of the learned Addl/JCIT(A), Jodhpur, relating to assessment year 2020-2021.

2. Facts of the case, in brief, are that the assessee is an individual, non-resident and filed his return of income on 06.02.2021 declaring income at Rs.30,25,104/- received from Accenture Inc., Canada and paid taxes of Rs.8,28,090/- in Canada on this income in

accordance with the provisions of secs,90/90A of the Act. The Assessing Officer completed the assessment proceedings on 24.12.2021 u/sec.143(1) of the Act and assessed the income of the assessee at Rs.33,42,700/- and the tax relief claimed u/sec.90/90A amounting to Rs.8,28,090/- has not been granted. As per the advice of his tax consultant CA Anil Kothari, the assessee filed a rectification application u/sec.154 of the Act for grant of relief u/sec.90/90A and the said rectification order u/sec.154 was passed on 08.08.2024 wherein the above mistake of non-granting of tax relief/credit was not rectified. Thereupon, the assessee, filed an appeal before the learned CIT(A) challenging the intimation order passed u/sec.143(1) of the Act with a delay of 961 days duly explaining the reasons for the delay. However, the learned CIT(A) did not satisfy with the explanation furnished by the assessee and dismissed the appeal of assessee u/sec.250 r.w.s.251 of the Act without considering the merits of the appeal filed by the assessee.

3. Aggrieved by the order of the learned CIT(A), the assessee carried the matter in appeal before the Tribunal.

4. During the course of hearing, the Learned Counsel for the Assessee submitted that the learned CIT(A) had simply dismissed the

appeal of assessee on the ground of delay without deciding the issue on merits with respect to the granting of credit of Rs.8,28,090/- which has been paid by the assessee in Canada on the declared income of Rs.30,25,104/- received from Accenture Inc., He submitted that the assessee has paid taxes at Rs.8,28,090/- on the declared income and as such, the orders of the authorities below are not sustained in the eye of law by not giving credit to the tax paid by the assessee u/sec.90/90A of the Act. He, accordingly, submitted that the delay of 961 days in filing of the appeal before the learned CIT(A) be condoned and the matter may be sent back to the file of jurisdictional Assessing Officer to verify the taxes paid by the assessee at Canada of Rs.8,28,090/-, by providing adequate opportunity of being heard to the assessee, in the interest of substantial justice. Otherwise, the assessee would be put to irreparable hardship and burdened with double taxes i.e., one income tax the assessee had already paid on the declared sum at Canada and for the same declared sum in India.

5. The Learned DR on the other hand relied on the orders of the authorities below and submitted that rectification proceedings u/sec.154 and appellate proceedings u/sec.250(A) of the Act before

the learned CIT(A) are two different proceedings. Therefore, the learned CIT(A) has rightly dismissed the appeal of assessee as per the provisions of the income Tax Act, 1961 and pleaded that the order of the learned CIT(A) be upheld.

6. I have heard rival submissions of both the parties, perused the orders of the authorities below and material placed 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 961 days in filing the appeal before the learned CIT(A) and remit the matter in issue for afresh verification by the jurisdictional Assessing Officer and decide the matter in issue on merits in consequential proceedings, 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/-

Copy to

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//

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Sr. Private Secretary : ITAT : Nagpur Bench
NAGPUR.