

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

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA.No.594/NAG./2024 [E-APPEAL]
Assessment Year 2020-2021

Nilesh Kiran Dhote, 23, Ganesh Housing Society, Morshi Road, Camp, AMRAVATI – 444 601. Maharashtra. PAN AJRPD5245N	vs.	The Income Tax Officer, Ward-3, ITO Bldg., AMRAVATI. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Anurag Lakhotia, C.A.
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 18.09.2024 of the learned Addl/JCIT(A)-2, Jaipur, relating to assessment year 2020-2021.

2. Facts of the case, in brief, are that the assessee is an individual and derives income from salary, income under the head PGBP from trading in futures and options, interest income from interest on income tax return. The assessee has filed it's original

return of income on 12.12.2020 and the same was processed by the Department and refund was issued on 28.12.2020. The assessee had later realized that income from trading in futures and options had not been shown in the original ITR. Therefore, he filed updated return on 29.03.2023 showing the said income and paying requisite taxes. Thereafter, the Department had issued order u/sec.143(1) on 30.12.2023 by increasing the liability to Rs.9,74,757/- instead of Rs.7,40,970/- provided by the taxpayer. Similarly, additional income tax was increased to Rs.4,98,221/- instead of Rs.3,80,860/- but not provided any details regarding the said adjustments. Therefore, the assessee filed a rectification application on 05.01.2024 u/sec.154 of the Act. The said rectification application filed u/sec.154 of the Act was rejected by the department on 31.07.2024. Thereafter, the assessee carried the matter in appeal before the learned CIT(A) with a delay of about 07 months by filing condonation of delay petition and affidavit. The learned CIT(A) did not satisfy with the reasons furnished by the assessee for the said delay of about 07 months and dismissed the appeal of the assessee on account of delay.

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 as contemplated u/sec.250(6) of the Act. He submitted that the delay of about 07 months in filing of the appeal before the learned CIT(A) be condoned and the matter may be sent back to the file of learned CIT(A) for deciding the issue on merits, by providing adequate opportunity of being heard to the assessee, in the interest of substantial justice.

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 about 07 months in filing the appeal before the learned CIT(A) and remit the matter in issue back to the file of learned CIT(A) for his afresh adjudication on merits, by affording adequate opportunity of being heard to the

assessee. Needless to say, it is the sole responsibility of the assessee to plead and prove his case in consequential proceedings. The assessee is also directed to file all documentary evidence(s) to substantiate his case. I further note that in the event the assessee failed to respond to the notices issued by the learned CIT(A) and not submitted documentary evidences as called for, the learned CIT(A) is at liberty to decide the matter in issue as per fact and law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

7. 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//

//True Copy//

Sr. Private Secretary : ITAT : Nagpur Bench
NAGPUR.