

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.3485/Mum/2024
(Assessment Year : 2017-18)

Mr Kamlesh Baburam Yadav Shivaji Nagar, Near Sharma Saloon, Anjurphata, Bhiwandi, Dist. Thane – 421 305 PAN : AFGPY1981B	vs	Income Tax Officer-1(2) Kalyan, Mohan Plaza, Wayale Nagar, Khadka Pada, Kalyan (W) 421 201
APPELLANT		RESPONDENT

Assessee by : None
Respondent by : MS Smitha V Nair (Addl. CIT)

Date of hearing : 07/11/2024
Date of pronouncement : 06/02/2025

ORDER

PER RAJKUMAR CHAUHAN:

This appeal is directed against the order dated 27/10/2021 passed by National Faceless Appeal Centre, Delhi (NFAC)[hereafter called 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 of the Income-tax Act, 1961 (in short, 'the Act') wherein the appeal of the assessee was dismissed on account of 4 days' delay and was not adjudicated on merit.

2. At the outset we notice that none was present on behalf of the assessee despite service of notice of hearing. However, we find that the appeal could be

disposed of even without the presence of the assessee. Therefore, the appeal was proceeded ex parte qua the assessee after hearing the Ld.DR and on perusal of the material on record.

3. While dismissing the appeal on account of delay, the Ld.CIT(A) has observed as under :-

“3.1 From the perusal of record, it is seen that the appellant has filed appeal on 30.01.2020 whereas the order u/s 143(3) is dated 20.12.2019. In Form No.35, for filing of appeal before CIT(A), the appellant has himself mentioned the date of service of the order u/s 143(3) as 27.12.2019. The appeal should have been filed within 30 days i.e. 26.01.2020 from service of Order as per Section 249(2) of the Act. Therefore, prima facie the appeal is late by 4 days. In column no. 14 of Form No. 35, the appellant stated that there is no delay in filing of appeal. This is a wrong fact as there is a delay in filing appeal. No document is attached along with Form No. 35 admitting delay and requesting for condonation of delay. Even notices u/s 250 dated 03.09.2021, 08.10.2021 and 18.10.2021 specifically pointing out this discrepancy of delay in filing appeal has not been complied by the appellant.

3.2 Considering all the facts on record, it is apparent that the appellant has failed to file appeal within the stipulated time limit prescribed under the Act. Since the appellant has not admitted that there is delay in filing of appeal whereas prima facie the appeal is late by 4 days. This is a case of misrepresentation of fact by the appellant. Under the given facts and circumstances, the appeal is not fit to warrant its admission. Therefore, the appeal is treated as dismissed as not admitted.”

4. We have heard the Ld.DR. The Ld.DR, supported the order of the Ld.CIT(A) stating that the delay of 4 days was not explained before the Ld.CIT(A) which has resulted into passing of the impugned order.

5. From the record we find that the assessee appellant filed appeal belatedly alongwith an affidavit for the delay of four days. The Ld.CIT(A) has, however, did not consider the affidavit and has taken a technical view as per the affidavit now filed by appellant / assessee, was due to non service of notice by post. Thus, it

was prayed that the contents of the affidavit may be considered and matter may be restored to the Ld.CIT(A) for deciding the same on merit after affording opportunity of hearing to the assessee. We notice that the Ld.DR could not contradict the affirmation made by the assessee in the affidavit, which reads as follows:-

"AFFIDAVIT IN SUPPORT OF APPLICATION FOR CONDONATION OF DELAY

1, Mr. Kamlesh Baburam Yadav, Age about 35, Occ: Business, Residing at: Shivaji Nagar, Near Sharma Saloon, Opp Rinki ME, Bhiwandi, Dist. Thane, do hereby solemnly state of oath as under:

1) I say that the present appeal has been filed by the appellant against the Order of CIT (A) (NFAC) dated 27/10/2021 (hereinafter referred to as "said order for the sake of brevity. That present application alongwith an Affidavit.

2) I say that the said appellate order appears to have been passed on 27/10/2021, however the same has never been served on the appellant by post. That somewhere in the end of June 2024, the Appellant came across the said appellate order on portal of Income Tax Department and therefore present appeal is filed belatedly.

3) I say that though there is no delay as such, considering the date of knowledge, however, considering the date of order, there is delay of 924 days i.e. approximately three years.

4) I say that it may be appreciated that the delay is mainly because of non-service of the said order. The appellant is therefore reasonably prevented from filing present appeal within time and the said delay is unintended and inadvertent as explained hereinabove.

5) I say that it is therefore necessary and expedient in the interest of justice to condone the aforesaid delay of 924 days i.e. three years approximately.

Solemnly affirmed and verified on 05/07/2024.”

6. We considered the contents of the affidavit and appreciated the submission made by the Ld.DR. The Ld.DR has not been able to bring on record anything contrary to the averment in the affidavit filed by the assessee. In the circumstances, we are satisfied that the assessee had a sufficient reason to file the appeal belatedly before the CIT(A). Therefore, in interest of natural justice, we deem it fit to condone the delay of 4 days. The delay in filing appeal before the CIT(A) is hereby condoned and the matter is restored to the file of the CIT(A). The CIT(A) is directed to decide the appeal on merit after giving due opportunity of hearing to the assessee. The appellant-assessee shall make the submission / necessary documents, if so required by the CIT(A) within a period of sixty days of this order.

7. In the result, the appeal filed by the assessee bearing ITA No.3485/Mum/2024 is allowed for statistical purpose.

Order pronounced in the open court on 6th day of February, 2025.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 06/02/2025
Pavanan

sd/-

(RAJKUMAR CHAUHAN)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**