

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.5553/दिल्ली/2024 (नि.व. 2019-20)
ITA No.5553/DEL/2024 (A.Y.2019-20)

Ravinder Kumar,
H.No. 807, H.B.C, Karnal,
Haryana 132001

PAN: AQTPK-4288-P

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-1,
Karnal, Haryana 132001

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Parikshit Aggarwal, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by : Shri Sanjay Kumar, Sr. DR

सुनवाई की तिथि/ Date of hearing : 03.02.2025

घोषणा की तिथि/ Date of pronouncement: 14.02.2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 04.11.2024, for assessment year 2019-20.

2. Shri Parikshit Aggarwal, appearing on behalf of the assessee submits that the assessee is an ex-serviceman. During the period relevant to assessment year under appeal, the assessee had received retiral benefits in the form of gratuity and commutation of pension which are free from tax. To substantiate his contention he placed on record copy of the Pension Payment Order (PPO) at page 20 & 21 of the paper book. The Assessing Officer (AO) on the basis of Form 26AS made addition of Rs.27,89,735/- under the head 'Income from Salary' and assessment framed u/s.

144 of the Income Tax Act, 1961(hereinafter referred to as 'the Act'). Aggrieved by the assessment order dated 11.01.2024 passed u/s. 147 r.w.s 144 r.w.s 144B of the Act filed appeal before the CIT(A). The appeal before the CIT(A) was time barred by 189 days. The assessee filed petition for condonation of delay, the CIT(A) without condoning delay dismissed the appeal *in limine*. The assessee had given detailed reasons for delay in filing of appeal. However, the CIT(A) without appreciating the reasons dismissed the appeal. The Id. AR submits that the assessee has *prima facie* good case on merits.

3. Per contra, Shri Sanjay Kumar representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. DR submits that the assessee failed to respond to the notices issued by the AO and was also negligent in filing of appeal within time before the CIT(A).

4. Both sides heard, orders of the authorities below examined. Undisputedly, there was delay of 189 days in filing of appeal before the CIT(A). The assessee had mentioned reasons for delay in filing of appeal in Form no. 35. On perusal of reasons given by the assessee causing delay in filing of appeal, it appears that the delay in filing of appeal was not intentional. The reasons appears to be bonafide. The CIT(A) has taken a pedantic view in rejecting the reasons given by the assessee causing delay in filing of first appeal.

5. The Hon'ble Apex Court in an unequivocal manner has repeatedly held that acceptance of reason given by the appellant/petitioner explaining delay should be the rule and refusal an exception. By taking a pedantic and hyper technical view the explanation furnished should not be rejected, causing loss and irreparable injury to the party against whom the lis terminates. The expression "sufficient cause" should be liberally construed so as to sub-serve the ends of justice.

5.1 The Hon'ble Apex Court in the case of *Collector Land Acquisition vs. Mst. Katiji & Ors.* 167 ITR 471 has held that liberal approach should be adopted while dealing with an application praying for condonation of delay. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. Pedantic and hyper technical approach should not be adopted while dealing with an application for condonation of delay.

5.2 The Hon'ble Apex Court in the case of *Ram Nath Sao @ Ram Nath Sahu & Others vs Gobardhan Sao and Others* 2002 AIR 1201 (SC) has held that the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act or Order 22 Rule 9 of Civil Procedure Code or any other similar provision should receive a liberal construction so as to advance substantial justice. The courts should not proceed with the tendency of finding fault with cause shown and reject the petition by a slipshod order in over jubilation of disposal derive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of *bonafide* can be imputed to the defaulting party.

6. On merits of the addition, I find that, the AO has erred in making addition of retrial benefits of the assessee. A perusal of the PPO at page 20 & 21 of the paper book reveals that apart from pension, retiral benefits include gratuity Rs.7,30,471/- and commutation of service pension Rs.13,83,329/-. The death-cum-retirement gratuity is exempt from tax u/s. 10(10) of the Act and commutation of pension is exempt u/s. 10(10A) of the Act. Hence, the AO erred in making addition of amounts received under the above heads by the assessee. The AO is directed to exclude aforesaid amount from the addition made in impugned assessment year. In the result ground no. 3 of appeal is allowed *pro tanto*.

7. In ground no. 4 of appeal, the assessee has assailed addition of Rs.17,408/- u/s.56 of the Act under the head 'Income from Other Sources'. No submissions were made in respect of the above said ground of appeal. The Id. AR of the assessee made statement at Bar that he is restricting his submissions only on the issue of retiral benefits of gratuity and commutation of pension. Therefore, ground no. 4 of appeal is dismissed.

8. Ground no. 5 and 6 of appeal are general in nature, hence, require no separate adjudication.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Friday the 14th day of February, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 14.02.2025

NV/-

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI