

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.557/Nag./2024
(Assessment Year : 2017-18)

Yogesh Harilal Patel
Flat no.203, Jai Rajaram Apartment
Opp. Patidar Bhavan, Lakadganj
Nagpur 440 008 PAN – BPGPP4237J

..... Appellant

v/s

Income Tax Officer
Ward-4(3), Nagpur

..... Respondent

Assessee by : Shri Rachit Thakar
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 06/02/2025

Date of Order – 25/02/2025

ORDER

This appeal by the assessee is against the impugned order dated 12/10/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. During the course of haring, the Registry has pointed out that there is a delay of 315 days delay in filing this appeal by the assessee. While going through the record available before us, we find that the assessee has furnished application seeking condonation of delay in filing this appeal before the Tribunal which is even supported by a sworn affidavit. The contents of the

application seeking condonation of delay in filing this appeal are extracted below for ready reference:-

"In this present appeal, the CIT(A), NFAC, Delhi has passed the Order u/s.250/u/s.143(3) of I.T.Act, 1961 dt.12.10.2023. The said order was passed by CIT(A), NFAC, Delhi dt. 12.10.2023, it has been in knowledge by the Appellant in the month of October-2024 (17.10.2024) only, when Assessment Unit, Income Tax Department has issued the Show Cause Notice dt.09.10.2024 for penalty proceedings u/s.271AAC(1), before that Appellant has don't know about the order passed by CIT(A), NFAC, Delhi dt.09.10.2024 u/s.143(3). The Appellant has immediately approached the counsel and filed the appeal without any further delay. In normal course appeal should be filed on or before 11.12.2023 but the appeal is filed today (21.10.2024), hence the delay of filing of appeal is 315 days.

The main contention for not filing of appeal is due to lack of knowledge of computer and Appellant has not aware about the online communication of Notices/Letters/Show Cause Notices issued by the Department. The Appellant has know regarding the order passed by the CIT(A), NFAC, Delhi dt. 12.10.2023 u/s.250/u/s.143(3) only when Show Cause Notice dt.09.10.2024 issued by the Assessment Unit, I.T. Dept. to Appellant penalty proceedings u/s.271AAC(1).

The Appellant immediately approached the Counsel and get prepare the appeal and file immediately without any further delay. Under the above circumstances, the delay was due to lack of knowledge of modern technology and therefore in the interest of justice delay in filing the present appeal, if any, may kindly be condoned. No prejudice is going to be cause to the Revenue, if delay is condoned and appeal will heard and decided on merits.

PRAYER:

It is prayed that the delay of about 315 days in filing the present Appeal may kindly be condoned."

2. After considering the submissions of the learned Departmental Representative and averments made in the affidavit, I am of the opinion that the assessee is prevented in filing the appeal belatedly and I am satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, I condone the delay of 315 days in filing the present appeal and admit the same for adjudication on merit.

3. The learned CIT(A) has passed ex-parte order, which reads as under:–

"There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on his part to pursue purposefully and co-operatively the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly appears that the appellant's compliance or rather lack of it, the appellant has not even bothered to pursue this appeal in any productive manner. Hence, in view of the aforesaid total non-compliance/non prosecution of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed off, as under, ex-parte, primarily on the basis documentation available on record.

5.3 I have perused the assessment order passed u/s 143(3), grounds of appeal and SOF. The appellant had deposited Rs 39, 20,000/- in demonetized currency notes in his bank accounts. The AO finding that the source of deposits has not been explained added the whole amount of Rs. 39,20,000/- as unexplained money u/s 69A of the IT Act 1961.

5.4 During the course of appellate proceedings, sufficient opportunities were given to the appellant, however, no submissions/evidences/documents have been filed by the appellant to substantiate the grounds of appeal. The appellant was given specific opportunity to file any details filed by him before any authority physically/online earlier as no replies of the appellant are found existing in the online system. Thus, in the absence of any submission/documents, I have no material to interfere with observations and addition made by the AO. In view of the above, I upheld the decision of the AO and confirm the addition of Rs. 39,20,000/-/-. Accordingly, all grounds of appeal are hereby dismissed."

2. During the course of hearing, before us also, none appeared on behalf of the assessee appellant.

3. On the other hand, the learned D.R. submitted that despite the learned CIT(A) provided sufficient opportunities to the assessee, however, the assessee did not appear before the learned CIT(A) and not furnished relevant details. He strongly supported the orders passed by the learned CIT(A).

4. I have heard both the learned Counsel for the parties, perused the materials available on record and gone through orders of the authorities below. I find that though the learned CIT(A) granted opportunities to the

assessee to substantiate its case, ultimately, the order passed by him is an ex-parte order. Therefore, I am of the opinion that by following the principles of natural justice, one opportunity should be given to the assessee to substantiate the case before the learned CIT(A). In view of the above, the impugned order passed by the learned CIT(A) is set aside and remit the back matter to the file of the learned CIT(A) and direct him to adjudicate the matter afresh on merit and in accordance with law after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

5. In the result, assessee's appeal stands allowed, but for statistical purpose only.

Order pronounced in the open Court on 25/02/2025

NAGPUR, DATED: 25/02/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur