



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2844 & 2847/PUN/2024
Assessment Years : 2012-13 & 2016-17

Shakuntala Dnyandev Salunkhe, Gate No.153, Plot No.44, Mauli Bangla, Deepnagar, A/P. Jaysingpur, Kolhapur – 416 101 Maharashtra PaN : BDLPS7949M	Vs.	ITO, Ward-1, Ichalkaranji
Appellant		Respondent

Appellant by	:	Shri Shiva and Shri Ravikiran (virtual)
Revenue by	:	Shri Arvind Desai
Date of hearing	:	04.03.2025
Date of pronouncement	:	03.04.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals at the instance of assessee pertaining to A.Yrs. 2012-13 and 2016-17 are directed against the separate orders both dated 09.08.2024 framed by National Faceless Appeal Centre (NFAC) which inturn are arising out of respective assessment orders passed u/s.144 r.w.s.147 of the Income Tax Act, 1961 (in short 'the Act').

2. In ITA No.2844/PUN/2024 relating to A.Y. 2012-13, assessee has raised the following grounds of appeal :

"1. The impugned Appellate order dated 09-08-2024 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi is opposed to law, facts and circumstances of the case.



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2. *The Ld. CIT(A), NFAC erred in law and on facts in not condoning the delay in filing the appeal, even though there is a sufficient and reasonable cause for such delay.*

3. *The Ld. CIT (A) NFAC erred in dismissing the appeal solely based on technicalities and further, the appellant ought not to have been denied the legal remedy, especially in light of the landmark ruling in the case of Collector, Land Acquisition vs. Mst. Katiji, reported in 167 ITR 471 (1987). Furthermore, the Ld. CIT(A) NFAC should have exercised the discretion conferred under section 249(3) of the Act in a manner that promotes and upholds the substantial cause of justice, considering the facts and circumstances of the case.*

4. *That the order passed by the learned CIT(A) is opposed to law and to the principles of natural justice and thus the impugned ex-parte order is liable to be set aside.*

5. *That the Ld.CIT(A) NFAC erred in confirming the additions made by the Id.AO without appreciating the fact that the order passed by the Ld.AO u/s 144 of the Act, ipso facto, is unfounded and arbitrary*

6. *The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.”*

3. Facts in brief are that the assessee is an individual who did not file return of income for the A.Y. 2012-13 under the provisions of section 139(1) of the Act. Based on the information available in NMS data that the assessee has deposited huge cash with various banks aggregating to Rs.10.21 crore, notice u/s.148 of the Act was issued to the assessee calling upon the assessee to furnish the required information relating to the assessment. Notices u/s.142(1) were also issued to the assessee to furnish the sources/explanation for the cash deposit in bank accounts. There was no compliance from the side of the assessee. In the event, ld. Assessing Officer (AO) vide order dated 26.12.2019 completed the assessment after obtaining the information from the banks by issuance of notices u/s.133(6) of the Act. While doing so, ld. AO brought to tax the said sum of Rs.10.21 crore as unexplained money/unexplained investment u/s.69A/69 of the Act.



4. Aggrieved assessee preferred an appeal before the Id.CIT(A) but the same was filed after the lapse of four years from the date of assessment order. The assessee claimed to have received the communication of the assessment order at a much later date and within the statutory time limit appeal was filed. However, Id.CIT(A) dismissed the appeal on account of delay in filing the appeal however he also dealt with merits of the case affirming the order of the AO.

5. During the course of hearing before us, Ld. Counsel for the assessee submitted that in the instant case the assessment order was passed on 26.12.2019, however, the copy of the same was received by the assessee through e-portal only on 28.11.2023 and the assessee has not received the assessment order through any other mode. The appeal before the Id.CIT(A) was filed on 06.12.2023. Therefore, there was no delay in filing the appeal as the assessee is in the knowledge of passing the order on 28.11.2023. On merits of the case, Ld. Counsel for the assessee submitted that assessee's case could not be represented before the authorities for the reasons beyond control of the assessee which led to passing of the *exparte* orders. Further, it was also alleged that notices u/s.143(2)/142(1) also were not served upon the assessee and proper opportunity was not provided to the assessee before passing the orders. Therefore, a prayer is made to remit the issues to the file of Id. Jurisdictional Assessing Officer.

6. We have heard both the sides and perused the material on record. A perusal of the impugned order indicates that Id.CIT(A) firstly held that the appeal is barred by limitation and thereafter has summarily dealt with the merits of the case affirming the



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action of the AO. We also observe that the assessee in the impugned proceedings has stated that the information of the assessment order which was passed as best judgment assessment u/s.144 r.w.s.147 of the Act on 26.12.2019 was taken note on 28.11.2023. It seems that the assessee did not participate in the assessment proceedings and was unaware about the passing of the assessment order but at a later stage when the penalty proceedings were initiated for which the intimation was received on 17.11.2023 then the assessee was able to know about the passing of the assessment order. Though the details are not available as to what was the e-mail id provided by the assessee on the income-tax portal on which normally the assessment orders are e-mailed but then taking into consideration that after few months after passing of the assessment order covid-19 pandemic outbreak restrictions were put in and for almost two years have been removed out of the limitation period by the Hon'ble Apex Court in the case of *Cognizance for Extension of Limitation In re (2022) 441 ITR 722 (SC)*. Therefore, taking liberal approach and in the larger interest of justice and also observing that the assessee may not have been communicated about the assessment order dated 26.12.2019, we deem it proper to condone the delay, if any, in filing of the appeal before Id.CIT(A). Here, we would like to make reference to a judgment passed by the Hon'ble Bombay High Court in the case of *Golden Times Services Pvt. Ltd. Vs. DCIT in W.P.(C) No.402/2020, dt. 13-01-2020* wherein the Hon'ble High Court held that "A person who is aggrieved or concerned with an order would legitimately be expected to exercise his rights conferred by the provision and unless the order is communicated or is known to him, either actually or constructively, he would not be in a position to avail such a



remedy". The relevant portion of the judgment is reproduced below:

"10. Be that as it may, the real question before us is as to what would be the relevant date for the purpose of commencement of period of limitation. To hold the date of the order to be the relevant date for the purpose of calculating the period of six months envisaged under Section 254(2) of the Act, can lead to several absurd and anomalous situations. An order passed without the knowledge of the aggrieved party, would render the remedy against the order meaningless as the same would be lost by limitation while the person aggrieved would not even know that an order has been passed. Such an interpretation would not advance the cause of justice and would not be the correct approach and thus cannot be countenanced. A person who is aggrieved or concerned with an order would legitimately be expected to exercise his rights conferred by the provision and unless the order is communicated or is known to him, either actually or constructively, he would not be in a position to avail such a remedy. The words "six months from the end of the month in which the order was passed" therefore, cannot be given a narrow and restrictive interpretation. There are several decisions of the Apex Court and other High Courts, where similar question came up for consideration. The Courts have always leaned in favour of an interpretation which would enable an aggrieved party to avail its remedy in a meaningful manner, so that the right conferred by a provision does not remain fanciful or illusory".

7. In view of the settled position of law, we are of the considered opinion that there may be delay in filing of the appeal but then there is no concrete evidence placed before us about the actual date of communication of the assessment order to the assessee and therefore we deem that the assessee came to know about the assessment order only on 28.11.2023 and therefore there was no delay in filing of appeal before Id.CIT(A).

8. So far as the merits of the case are concerned, we find Id.CIT(A) has summarily dismissed the appeal of the assessee by affirming the action of the AO and not passing a speaking order. Considering the totality of the facts and circumstances prevailing in the instant case and submissions made by the Ld. Counsel for the assessee, we are of the considered opinion that the end of justice would meet adequately if the issues on merit



are remitted back to the file of ld.CIT(A) for necessary adjudication. Assessee is directed to adduce evidence in her support as deemed expedient. Ld.CIT(A) may call for the remand report from ld. Jurisdictional Assessing Officer for the evidences and documents if any are filed by the assessee. Assessee is also directed to provide proper email id and contact detail to the department for receiving notices through ITBA portal. Assessee is further directed to remain vigilant and not to seek unnecessary adjournment unless otherwise required, failing which the ld. ld.CIT(A) is at liberty to proceed in accordance with law. Finding of ld.CIT(A) is set aside and effective grounds of appeal raised by the assessee are allowed for statistical purposes.

9. So far as ITA No.2847/PUN/2024 relating to A.Y. 2016-17, facts in brief, are that the assessee has not filed the return of income u/s.139(1) of the Act. Ld. AO concluded the assessment u/s.147 r.w.s.144 of the Act after making certain additions assessed the income at Rs.1.11 crore. Aggrieved assessee preferred appeal before the ld.CIT(A) who vide impugned order dismissed the appeal *in limine* for non-prosecution. Now the assessee is in appeal before this Tribunal.

10. During the course of hearing before us, ld. Counsel for the assessee submitted that the assessee's case for the A.Y. 2016-17 also could not be represented before the authorities for the reasons beyond control of the assessee. Given an opportunity, the assessee is now in a position to submit the relevant evidences to the satisfaction of the authorities. Therefore, a prayer is made to remit the issues on merit to the file of ld.CIT(A) for necessary adjudication.



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11. Having heard the rival parties and perusing the record placed before us and the submissions made by the ld. Counsel for the assessee, we are of the considered opinion that ends of justice would meet adequately if the issues on merits are remitted back to the file of ld.CIT(A) for *denovo* adjudication as the ld.CIT(A) has not disposed of the appeal on merits as contemplated u/s.250(6) of the Act. Finding of ld.CIT(A) is set aside and effective grounds of appeal raised by the assessee are allowed for statistical purposes.

12. In the result, both the appeals of the assessee are allowed for statistical purposes in the terms indicated above.

Order pronounced on this 03rd day of April, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03rd April, 2025.
Satisfy

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.