

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष

Before
SONJOY SARMA, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER
I.T.A. No.: 254/PAT/2024
Assessment Year: 2011-12

Sarika Choudhary (Appellant)	Vs.	ACIT, Circle-4, Patna (Respondent)
PAN: AESPC4748P		

Appearances:

Assessee represented by : Brisketu Saran Pandey, Adv.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : February 5th, 2025

Date of pronouncing the order : April 4th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)- 2, Patna [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2011-12 (the appeal order of the Ld. CIT(A) mentions A.Y. 2013-14, which is later explained to be inadvertently incorrectly mentioned in Form No. 35) dated 05.03.2020,



which has been passed against the assessment order u/s 143(3) of the Act, dated 29.03.2016.

1.1. The Registry has informed that the appeal is delayed by 1500 days and the assessee has filed an application seeking condonation of delay which is as under:

“1. That the appellant was not aware in regard to order dated 05/03/2020 but when was going through the portal of Income Tax Department which is of appellant concern and in the course of searching, the subject order was found accidentally in the icon shown on the portal it was under indicated place of Notice, when down loaded, the subject order was there in the portal which is available even at present.

2. That it is not out of way to mention hereto that when on the portal proceeding icon located, from where a letter dated 05.03.2020 pertaining to AY 2013-14 in fact, which is of A Y 2011-12 and whenever it was downloaded, the same letter dated 05.03.2020 was having instruction for availing the scheme 2020 namely (Vivad se Bishwas) mentioning a demand of Tax Rs 42,80,100/only in the said letter.

3. That in the facts and circumstances stated above the assessee has not been able to submit the appeal hence the assessee prays that your honour will be graciously pleased to condemn the delay in filing the appeal and be further pleased to admit the appeal and adjudicate the same.

And for this the appellant shall ever pray.”

1.2. The assessee has also filed an affidavit stating that the Hon'ble Supreme Court had condoned the limitation period which was applicable under any law from 15.03.2020 to 28.02.2022 due to COVID-19 Pandemic and the limitation was to be commenced from 14.04.2022 for filing the appeal. The present appeal is delayed by almost 22 months. The reason for the delay is explained as the father of the assessee is a cardiac patient who required regular attendant and also suffered heart attack in the month of April 2022 and thereafter faced severe complications. The assessee is the one who takes cares of her father at this age of his life. The husband of the assessee has also been suffering



from liver related disease and orthopaedic related issues and has been undergoing medical treatment at New Delhi. The assessee herself was suffering from orthopaedic issues from June, 2022 till date and due to medical emergencies, had been busy in taking care of her family members. The accountant/consultant who was taking care of tax related matter of the assessee left the job in due his personal reason without informing and updating the assessee. In October 2023, the assessee was informed by the accountant/consultant that he was not interested to take care of her tax related matter anymore and she appointed a new consultant in the last week of December, 2023, which took some time due to festival months being Dussehra, Diwali and Chhath-Puja. It is also stated that the copy of impugned order dated 05.03.2020 was never communicated/served upon the assessee by email or by Post and the assessee only got to know about the same when she logged in on the portal on 30.01.2024 for regular checking of TDS deduction status, and appeal filing/hearing status and thereby got to know that the appeal was rejected by the appellate authority in a mechanical manner. The statutory period of 60 days was expiring on 28.04.2024 and in between the assessee approached her Counsel in the first week of February 2024 for filing of appeal before the Hon'ble Tribunal of Income Tax, Patna and it was requested that in view of the circumstances cited in the affidavit the delay may be condoned.

1.3. We have gone through the application seeking condonation of delay as well as the affidavit filed which is also supported by the medical documents and find that there was sufficient cause for the delay. Thus, the delay in filing the appeal is hereby condoned and the appeal is admitted for adjudication.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. For that on the facts and circumstances of the case the learned CIT (Appeal), Patna -2 has erred in dismissing the appeal, even after taking cognizance that "The issue pertains to A Y 2011-12" on the ground that Form NO-35 is of A Y 2013-14.

2. For that on the facts and circumstances of the case the learned CIT (A) has erred in dismissing the appeal without giving any Notice to the appellant to rectify the inadvertent mistake in Form No-35.

3. For that any other grounds shall be urged at the time of hearing, if necessary."

3. Brief facts of the case are that the assessee is an individual and derives income from salary, house property and other sources. The return of income for AY 2011-12 was filed on 17.04.2012 declaring total income of Rs. 1,82,798/-. A survey u/s 133A of the Act was conducted at the business premises of M/s. Avaran, prop. Sri Madhumesh Choudhary. During the survey a deed was found, on perusal of which it was observed that Smt. Sarika Choudhary, W/o Sri Madhumesh Choudhary had invested Rs. 82 Lakh in purchase of immovable property at Dak Bungalow Road, Patna but the assessee did not produce any proof in support of the alleged investment during survey or even later. The assessment was reopened u/s 147 of the Act vide notice u/s 148 of the Act dated 14.03.2012 and the order u/s 147 of the Act was passed on 31.03.2013 assessing the total income at Rs. 2,27,87,800/-. The assessee disputed this order before the Ld. CIT(A), who vide order dated 27.03.2014, quashed the order of the Ld. AO on the fact that proceeding u/s 147 of the Act were initiated on 14.03.2012 well before expiry of time limit prescribed for issuing notice u/s 143(2) of the Act, which was to expire on 30.09.2012. The Ld. CIT(A) also directed the Ld. AO to take suitable action as per law with respect to



Rs. 85 Lakh advance received by the assessee from M/s. Maniratan Vanijya Pvt. Ltd. and unsecured loan of Rs. 9 Lakh from Mr. S.S. Bose. Accordingly, a notice u/s 148 of the Act was issued on 18.06.2014 and served upon the assessee. Finally, the assessment order was passed making and addition of Rs. 85 Lakh on account of cash credit as the loans and advances received during the year were treated as bogus. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued notices for hearing but either the assessee sought adjournment or did not comply. But in response to the notice issued on 07.02.2020 for 17.02.2020, written submission was filed and on 05.03.2020 the assessee also appeared. The Ld. CIT(A) dismissed the appeal of the assessee by observing that the issue pertains to AY 2011-12 and the demand notices were also of AY 2011-12 but Form No. 35 was of AY 2013-14. As subsequent to the filing of the appeal, reassessment was made on 13.12.2017, therefore, as per the Ld. CIT(A) the appeal had become academic and without going into the merits of the case it was dismissed as the issue pertained to AY 2011-12 and the demand notice was also of AY 2011-12 but Form No. 35 was of AY 2013-14.

4. Rival submissions were heard and the record and the submissions made have been examined. It was submitted that the order of the Ld. CIT(A) was not served properly and the order was posted under notice and not under the order in the portal and the copy was obtained in October, 2023. Inadvertently, the assessee wrote AY 2013-14 in Form No. 35 instead of the correct AY 2011-12 and the Ld. CIT(A) has dismissed the appeal in a mechanical manner while Form No. 35 required correction/revised form needed to be filed. The Ld. AR requested that matter may be set aside to the Ld. CIT(A) to decide the



appeal on merit. The Ld. DR argued that the order of the Ld. CIT(A) may be upheld.

5. We have examined the facts of the case and also gone through the orders of the Ld. CIT(A) and the Ld. AO. We have also heard the submissions made. The Ld. CIT(A) dismissed the appeal on technical ground of the assessment year being incorrectly mentioned as AY 2013-14 instead of the same being AY 2011-12. The Ld. CIT(A) has not decided the merits of the case. Therefore, in the interest of justice and fair play, we deem it imperative that the assessee may be given another chance to file the correct Form No. 35/be allowed to correct the assessment year mentioned in Form No. 35 and the Ld. CIT(A) will decide the appeal on merits since the merits of the case have not been discussed as required u/s 250(6) of the Act. Hence, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter back to him for disposal of the grounds taken by the assessee on merit, by passing a speaking order. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed, if required. Accordingly, the grounds taken by the assessee in this appeal are allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 4th April, 2025.

Sd/-

[Sonjoy Sarma]

Judicial Member

Dated: 04.04.2025

Bidhan (P.S.)

Sd/-

[Rakesh Mishra]

Accountant Member



Copy of the order forwarded to:

1. **Sarika Choudhary, G F Madhu Sarika Niwas, Bank Road, Near Tara Nursing Home, Patna, Bihar, 800001.**
2. **ACIT, Circle-4, Patna.**
3. CIT(A)-2, Patna.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata