

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH, AGRA**

BEFORE: SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA No. 200/Agr/2023
Assessment Year: 2017-18**

Shuchi Varshney, 8-9,
Bhagwati Market, Chhipeti,
Aligarh.

PAN: ATCPV1627M
(Appellant)

v. Income-tax Officer,
Ward 4(1)(1), Aligarh

(Respondent)

Assesseeby : Sh. Shivam Garg, Advocate
Revenue by : Sh. Shailendra Srivastava, Sr. DR

Date of hearing : 02.12.2024
Date of Pronouncement : 06.12.2024

ORDER

This appeal in ITA No.200 /Agr/2023 for the assessment year 2017-18 has arisen from the appellate order dated 25.07.2022(DIN& Order No. ITBA/NFAC/S/250/2022-23/1044067934(1)) passed by Id. Commissioner of Income-tax(Appeals), NFAC, Delhi, which appeal in turn has arisen from the assessment order dated 12.12.2019 passed by Assessing Officer u/s. 143(3) of the Income-tax Act, 1961.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with Income Tax Appellate Tribunal, Agra Bench, Agra, reads as under :

“1. Because on the facts of the case and in law and under the circumstances the assessing officer erred in making addition of Rs.20,44,000/- in respect of cash deposited in bank during demonetization period without appreciating and considering the material on record and without applying judicial mind. The addition made is thus illegal and bad in the eyes of law. Further the assessing officer also erred by invoking provision under section 115BBE is thus not only un reasonable but very excessive and without sufficient material not on the record.

2. That the assessing officer further erred on facts and in law in initiating proceedings for the levy of penalty under section 271AAC.

3. That the appellant craves, leave to modify / amend or add any one or more grounds.”

3. At the outset, it is observed that this appeal is filed belatedly by assessee by 438 days beyond the time prescribed u/s 253(3) . The appellate order passed by Id. CIT(A) is dated 25.07.2022 which is stated by the assessee in Form No. 36 to have been received on 29.07.2022, while this appeal is filed by assessee with the Tribunal on 05.12.2023. The assessee has filed application for condonation of delay, which is reproduced as under :

“Application for Condonation of Delay

Dated 05/12/23

The Ld. ITAT.
Agra

Sub: Regarding condonation of delay of filing appeal in the case of Shuchi Varshney 8-9, Bhagwati Market, Chhipeti, Aligarh. PAN-ATCPV1627M A.Y. 2017-18

Dear Sir.

Kindly refer to the above.

That the present appeal is being filed with delay due to following reasons:

That from June 22 to till date counsel , Abhishek Gupta was suffering from chronic disease and due to which he was not in position to file appeal. Though he has sent the appeal via his mail id on 21.04.23.

As per reason for delay mentioned above it is ample clear that there was no intention of the assessee society in filling appeal it was happened due to unavoidable circumstances and liable to condone.

I. therefore, request you to please condone the delay in filing of appeal considering the facts mentioned above in the interest of justice as well as law.

Thanking in anticipation.
Sd/-
Shuchi Varshney
Aligarh

3.2. Thus, the main reason for filing this appeal belatedly with ITAT is that the counsel of the assessee was suffering from chronic disease, and was not in a position to file this appeal. The assessee has also enclosed letter from M/s P.C. Gupta & Associates, Advocate, Fancy

House Compound , Infront of S.M.B. Inter college, Near Jain Petrol Pump, Ramghat Road, Aligarh-202001 signed by Mr. Abhishek Gupta, Advocate , wherein it is stated that the said Advocate was suffering from Chronic liver disease and was under treatment of Dr. S L Barur (Appolo Delhi) , Dr Randhir Sood, Medanta , Gurgaon and some other local physicians of Aligarh. It is submitted in the certificate that the appeal fee was paid on 03.09.2022 and the appeal was kept ready in time , but since Shri Abhishek Gupta, Advocate was suffering from chronic disease and not visiting his office and operating on telephone, the appeal could not be filed in time due to oversight of the office of the Advocate. The said Advocate has enclosed medical prescription of Dr. Prof S L Broor dated 16/04/2022 & 26/06/2023 , ultrasound report dated 23.01.2023. The said medical prescriptions and reports are placed on record in file. Counsel of the assessee Shri Shubham Garg, Advocate appeared before the Bench and sated that the appeal fee was deposited in time within within limitation as provided u/s 253(3), on 03.09.2022 while the appeal was belatedly filed on 05.12.2023 owing to chronic illness of the assessee's counsel Shri Abhishek Gupta, Advocate.

3.3 Ld. Sr. DR has no serious objection in condoning the delay in filing this appeal.

4. I have considered rival contentions and perused the material on record. I have observed that this appeal is filed by the assessee with ITAT belatedly by 438 days beyond the time prescribed u/s. 253(3) of the Act. The assessee had duly deposited the appeal fee on 03.09.2022 within the period of limitation, however, the appeal is filed belatedly on 05.12.2023 and the main reason stated for this delay is the chronic illness of the assessee's counsel, Shri Abhishek Gupta, Advocate. Medical certificates are filed on record. Department has no serious objection to the condonation of delay. I observe that this delay of 438 days in filing this appeal belatedly by the assessee needs to be condoned. If substantial justice and technicalities are pitted against each other, Courts will lean towards advancement of substantial justice, unless malafide is at writ large on the part of litigant. I do not find any *mala fide* on the part of the assessee in filing this appeal belatedly by 438 days with the Income-tax Appellate Tribunal. The assessee has shown reasonable and sufficient cause in filing this appeal belatedly. In-fact the assessee duly deposited

Appeal fee of Rs. 10,000/- with government treasury on 03.09.2022(challan number 3742 /CIN 324821060/Axis Bank(BSR code 6360218), which is within period of limitation as provided u/s 253(3), but no doubt the appeal is filed belatedly. The assessee has claimed that the appeal was ready but owing to chronic illness of Advocate Shri Abhishek Gupta , the same cannot be filed in time. The certificate from said Advocate along with medical prescriptions/ultrasound reports are filed. I further observe that the assessee is not likely to gain anything by filing this appeal belatedly, rather the appeal fee was paid in time. I, therefore, condone the delay of 438 days in filing of this appeal belatedly by the assessee beyond the time prescribed u/s. 253(3) of the Act. Reliance is placed on the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag &Ors. vs Mst. Katiji&Ors 1987 AIR 1353.

5. Brief facts of the case are that the assessee had filed return of income declaring total income of Rs.3,31,900/- on 27.03.2018. Case of the assessee was selected for framing limited scrutiny through CASS for the reasons'cash deposits during the demonetization period' as per SFT reporting. The statutory notices u/s 143(2) and

142(1) were issued by the AO. The assessee deposited cash of Rs.20,44,000/- in her bank A/c. No. 01631131003319 with Oriental Bank of Commerce, Aligarh in demonetized currency of Rs.1000/- and Rs.500/- during demonetized period. Assessee explained that the cash deposited was available with her and was given as an advance for purchase of land and the source of cash was from her own earnings as well as gifts received in marriage from relatives and others. The assessee also filed Wealth Tax Return for A.Y. 2015-16 on 29.03.2016 i.e.prior to demonetization period. In the said Wealth Tax Return, assessee declared cash of Rs.5,56,700/- as well as loan advance of Rs.12,20,000/-. Assessing Officer rejected the contention of the assessee, as on examination and verification, it was found that the assessee did not attach any documents except e-filing receipt of Wealth Tax to substantiate his claim. No evidence of advance given for purchase of land, own earnings and gifts received was attached in support of the claim. The assessee enclosed e-filing receipt of wealth tax return filed on 29.03.2016. Assessing Officer observed that Wealth Tax Act was already abolished from financial year 2015-16, and the details of the assets are now required to be filed in the

Income-tax Return for the assessment year. As per e-filing portal assessee has filed ITR's from assessment year 2014-15, 2015-16 and 2016-17, wherein the assessee has declared following income :

Assessment year	Total Income	Cash balance declared in ITR	Head of Income
2014-15	2,16,750/-	NIL	Business income
2015-16	2,97,190/-	NIL	Business income
2016-17	2,97,700/-	28,000/-	Business Income

5.2 Assessing Officer observed that the account of the assessee was opened on 26.04.2016, and there was credit of Rs.6,10,116/- . Assessing Officer after considering the contentions of the assessee observed that considering marriage gifts received in cash and considering assessee's earlier earnings as per ITRs and cash balance declared in AY 2016-17, the AO granted relief of Rs.1,00,000/- as maximum savings in specified bank notes of Rs. 1000 and Rs. 500. The AO made additions to the tune of balance amount of Rs.19,44,000/- deposited by the assessee in demonetized currency of Rs.1000/- and Rs.500/- in SBN during the demonetization period of 9th November to 30th December, 2016, by treating the same

as unexplained money u/s. 69A of the Act, which was added by the AO to the income of the assessee, and taxed by the AO in the hands of the assessee u/s. 115BBE of the Act.

6. Aggrieved, the assessee filed first appeal with Id. CIT(Appeals). Ld. CIT(Appeals) issued as many as four notices during the appellant proceedings, but there was no compliance on the part of the assessee. Three notices dated 28.01.2021, 08.10.2021 and 15.12.2021 were issued during the period of Covid while one notice was issued on 12.07.2022 and thereafter, Id. CIT(Appeals) dismissed the appeal of the assessee on 25.07.2022, by confirming the assessment order and not interfering with the assessment order.

7. Still aggrieved, the assessee has filed second appeal and counsel Shri Shivam Garg, Advocate filed adjournment application, which adjournment application was withdrawn by Id. Counsel for the assessee during the course of hearing. Ld. Counsel for the assessee submitted before the Bench that the Id. CIT(Appeals) has passed an ex-parte order, which is not in compliance with the provisions of section 250(6) of the Act, as the appeal has not been decided on merits by passing a speaking and reasoned order. The Id. CIT(A) has

simply dismissed the appeal of the assessee. It was submitted that it is due to chronic liver disease suffered by the Counsel for the assessee, Shri Abhishek Gupta, response could not be submitted before Id. CIT(A). So far as the notice dated 12.07.2022 is concerned, It was stated that the learned counsel of the assessee Shri Abhishek Gupta was busy in filing the returns and hence, could not file reply to the Id. CIT(Appeals). It was submitted that cash was deposited in the bank account from cash in hand available from past earnings, marriage gifts and advance for land. The Id. Counsel for the assessee has prayed that the assessee wants to file evidence before Id. CIT(Appeals) to substantiate its case and direction may be issued to Id. CIT(Appeals) to admit the evidences. It was submitted that the letter dated 05.12.2023 of the counsel Shri Abhishek Gupta, Advocate along with medical certificates issued by Indraprastha Apollo Hospital were submitted, which clearly shows that the counsel of the assessee was suffering from chronic liver disease, hypertension etc. Thus, it was prayed that the matter can be set aside back to the file of Id. CIT(Appeals) for denovo adjudication.

7.2 Ld. Sr. DR fairly submitted that the department has no objection if the matter can be restored back to the file of Id. CIT(Appeals) for deciding the issues afresh arising in appeal on merits by Id. CIT(A).

8. I have considered rival contentions and perused the material on record. I observe that the Id. CIT(Appeals) has simply dismissed the appeal of the assessee ex parte in limine without deciding the issues arising in appeal on merits. The Id. CIT(A) has upheld the assessment order by holding that he does not want to interfere with the assessment order. There is no independent application of mind by Id. CIT(A) and the appellate order passed is not a speaking and reasoned order. Both the parties before the Bench agreed that the matter can be restored back to the file of Id. CIT(Appeals) for deciding the appeal on merits afresh on merits in accordance with law. The Id. CIT(A) has not even dealt with the contentions of the assessee that cash deposited in the bank account of Rs.20,44,000/- in SBN during demonetized period were from earnings, gifts during marriage and from advance from land. There is no enquiry conducted by Id. CIT(A), and even assessment records were not called by Id. CIT(A) to verify the contentions/evidences submitted by the assessee during

the course of assessment proceedings. The Id. CIT(A) simply dismissed the appeal of the assessee by upholding the assessment order passed by the AO by holding that he do not want to interfere with the assessment order passed by the AO. The Id. CIT(A) has vast powers under the 1961 Act, which even include power of enhancement. The Id. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6) where he has to state point for determination, his decision and reasoning thereof, as Id CIT(A) is required to pass reasoned and speaking order on merits in accordance with law with independent application of mind on material on record as well collected by him during appellate proceedings. The appellate order passed by Id. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by Id. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on

merits of the issues are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of Id. CIT(A) in deciding the issues. If the Id. CIT(A) simply dismiss the appeal merely because the assessee did not comply with the notices issued by Id. CIT(A) , in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the Id. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . The appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating the assessment order passed by AO is upheld and that I donot want to interfere with the assessment order is not sufficient, and that the assessee has not submitted details/documents is not sufficient. The Id. CIT(A) has to make independent enquiries , which were not done , not even assessment records were called for by the Id. CIT(A). The Id. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO., which even includes power of

enhancement. It is equally true that the assessee also did not comply with the notices issued by Id. CIT(A) and did not file the requisite details/documents to support his contentions. Thus, the assessee is equally responsible for its woes. Under these circumstances and fairness to both the parties, in the interest of justice, the appellate order of CIT(A) is set aside and the matter can go back to the file of Id. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. I clarify that I have not commented on the merits of the issues in the appeal. I order accordingly.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06/12/2024.

Sd/-

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Dated: 06/12/2024

*aks/-