

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND**  
**SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA no.770/Mum./2022**  
(Assessment Year : 2013-14)

Shri Vijay Liladhar Mohmaya  
36, Eastern Chambers  
Poona Street, Dana Bunder  
Mumbai 400 009 PAN – AABPM3414F

..... Appellant

v/s

Income Tax Officer  
Ward-17(3)(5), Mumbai

.....Respondent

Assessee by : Shri Nishit Gandhi  
Revenue by : Shri Kiran Unavekar

Date of Hearing – 17/10/2022	Date of Order – 03/01/2023
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**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 01/05/2018 passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals)-28, Mumbai [*'learned CIT(A)'*], for the assessment year 2013-14.

2. The present appeal is delayed by 1395 days. The assessee has filed an application seeking condonation of delay supported by an affidavit sworn by the assessee. In the application, it is submitted that the assessee is a senior citizen with limited education. Further, since past some years and particularly

after the Covid pandemic period his business has also stopped. It is further submitted that the Chartered Accountant who was handling his Income Tax matters including the filing of return expired on 26/04/2016, and thereafter there is no regular Chartered Accountant of the assessee and even his return of income is filed by different persons. It is also submitted that after the death of his regular Chartered Accountant, the appeal before the learned CIT(A) was represented based on partial documents available with the assessee. It is further submitted that only pursuant to intimation about the penalty order passed under section 271(1)(c) of the Act in January 2020, he was informed by his Chartered Accountant about the dismissal of quantum appeal by the learned CIT(A) and till that date, he was not aware of the impugned order. Only thereafter upon advice from the Chartered Accountant, all the necessary papers were collected and the present appeal was filed. The assessee also submitted that he was suffering from cardiac ailments and other cardiovascular diseases and in November 2019 a coronary angioplasty was performed. The assessee has filed the medical certificate in support of its aforesaid submission. Accordingly, in view of aforesaid submissions, the assessee has prayed for condonation of delay in filing the present appeal.

3. On the other hand, the learned Departmental Representative (*'learned DR'*) vehemently opposed the condonation of delay in filing the appeal.

4. Having considered the submissions of both sides and perused the application seeking condonation of delay along with the affidavit filed by the assessee, we find that assessee is an individual who is about 69 years old. Further, it is the claim of the assessee that his regular Chartered Accountant

who was handling his Income Tax matters expired during the pendency of the appeal before the CIT(A) and thereafter he has no regular Chartered Accountant to advise him properly on the Income Tax matter. It is also the claim of the assessee that the impugned order was not received by him and only upon intimation regarding the penalty order under section 271(1)(c) of the Act, he was informed by his Chartered Accountant that quantum appeal has been dismissed by the learned CIT(A), against which further appeal needs to be pursued. It is further evident from the medical report filed along with the condonation application that the assessee is a cardiac patient and had undergone treatment in the year 2019. The reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of *Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387*. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, nothing has been brought on record to show that the assessee shall stand to benefit by late filing of the present appeal. In view of the above and having perused the application, which is also supported by an affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore we condone the delay in filing the appeal by the assessee and we proceed to decide the appeal on merits.

5. In this appeal, the assessee has raised the following grounds:

- "1. In the facts and circumstances of the case and in law, the order passed by the Learned Commissioner of Income Tax (Appeals) 28-Mumbai ["the CIT (A)" for short] w/s 250 of the Income Tax Act, 1961 ["the Act" for short] is bad in law and deserves to be quashed since:
  - (i) The same is passed in violation of principles of natural justice; and;
  - (ii) The Order is a totally non-speaking order without any independent reasoning whatsoever.
2. In the facts and circumstances of the case and in law, it is submitted that such an order deserves to be quashed.

ON MERITS:

3. In the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Learned Assessing Officer ["the AO" for short] in disallowing an amount of Rs.6.82,855/- claimed by the Assessee as bad debts/ business loss.
  - 3.1 While doing so, the Ld. CIT(A) failed to appreciate that:
    - (a) The said amounts were rightly claimed as bad debts/business loss by the Assessee;
    - (b) The disallowance by the Ld. AO of the amount of Rs.4,00,000/- claimed as bad debts/business loss is not in accordance with law and in any case the same was recovered in the next year and was offered to tax in that year which fact is undisputed;
    - (c) Disallowing the very same amount of Rs. 4,00,000/- amounted to double taxation which is impermissible under the Act.
    - (d) As far as the amount of Rs.2,82,855/- is concerned the same has been disallowed on frivolous grounds on mere assumptions and presumptions. based on extraneous and irrelevant considerations while ignoring the relevant and material considerations; In the facts and circumstances of the case and in law, the action of the Ld. AO as affirmed by the Ld. CIT(A) deserves to be reversed and it is prayed accordingly.
4. In the facts and circumstances of the case and in law the disallowance made by the Ld. AO and as confirmed by the Ld. CIT(A) deserves to be deleted.
5. Each of the above grounds are without prejudice to one another and the Appellant craves leave to add, amend, alter, delete or modify all or any of the above grounds of appeal."

6. The issue arising in grounds no. 3.1(b) and 3.1(c), raised in assessee's appeal, is pertaining to the addition of Rs. 4 lakh on account of bad debts claimed by the assessee.

7. The brief facts of the case pertaining to this issue are: The assessee is an individual and is carrying out the business of transport. For the year under consideration, the assessee e-filed his return of income on 30/09/2013 declaring a total income of Rs.9,83,820. During the assessment proceedings, it was observed from the profit and loss account that the assessee has claimed bad debts to the tune of Rs.4 lakh. In this regard, the assessee was asked to submit the details of bad debts. In response thereto, the assessee submitted that it had given a loan of Rs.4 lakh in earlier years to Shri Jayesh Mamoya, which was not recoverable and therefore was written back as bad debts. The assessee further submitted that the said loan was recovered in the next year and was offered as income. The Assessing Officer ('AO') vide order dated 06/02/2015 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the loan given is not in the nature of capital receipt or loss and therefore not in the nature of a revenue expenditure or income. Thus, the expenses cannot be routed through the profit and loss account. The AO further held that since the conditions of section 36(2) of the Act are not satisfied, therefore, the claim of bad debts is not allowable. Accordingly, the AO disallowed the claim of bad debt of Rs.4 lakh and added the same to the total income of the assessee. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

8. During the hearing, the learned Authorised Representative (*'learned AR'*) submitted that the amount of Rs.4 lakh which was given as a loan was recovered by the assessee in the subsequent year and the same was also offered for taxation. Thus, the disallowance of bad debts in the current year will result in double disallowance in the hands of the assessee.

9. On the contrary, the learned DR vehemently relied upon the orders passed by the lower authorities.

10. We have heard the rival submissions and perused the material available on record. We find that during the assessment proceedings, in response to the query of the AO, the assessee submitted that Rs.4 lakh given as a loan was recovered in the subsequent assessment year and was also offered for taxation. However, the lower authorities despite the aforesaid fact proceeded to disallow the claim of bad debts and made the addition to the total income of the assessee. We find from the perusal of the profit and loss account for the year ended 31/03/2014, on page 15 of the paper book, that the amount of bad debts of Rs.4 lakh was received by the assessee and the same was declared as income in the subsequent assessment year. Thus, once the assessee has offered the income to tax in the subsequent assessment year, we find no basis in upholding the disallowance made by the lower authorities. Accordingly, we direct the AO to delete the addition of Rs.4 lakh. As a result, grounds no.3 (b) and 3(c) raised in assessee's appeal are allowed.

11. The issue arising in ground no. 3.1(d), raised in assessee's appeal, is pertaining to the addition of Rs.2,82,855 on account of bad debts claimed by the assessee.

12. The facts of the case as emanating from the record are: During the assessment proceedings, it was observed that the assessee has shown bad debts of Rs.2,82,855. The assessee was asked to show cause as to why the bad debts written off should not be disallowed and added back to the total income of the assessee. In response thereto, the assessee submitted that during the year the assessee had written off the amount due from the firm from the year 1994-95. It was further submitted that in the said firm 3 brothers and their mother was partner, which may have stopped doing the business. The assessee further submitted that it was entitled to profit/salary from the said firm and hence the balance of Rs.2,82,855, was due from the firm as salary/share of profit of the partner. As the assessee did not get money, the assessee decided to write off the amount due. The AO vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the bad debts claim by the assessee is in the nature of capital receipt or loss and not in the nature of revenue expenditure/income. Thus, the expenses cannot be routed through the profit and loss account. The AO further held that since the conditions of section 36(2) of the Act are not satisfied, therefore, the claim of bad debts is not allowable. Accordingly, the AO disallowed the claim of bad debts of Rs.2,82,856, and added the same to the total income of the assessee. The

learned CIT(A) vide impugned order dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

13. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A) dismissed assessee's appeal by observing as under:

*"3. It is clear thus that the claim has no legs to stand upon. The disallowance is confirmed."*

14. We find that the learned CIT(A) provided no reasons for coming to the aforesaid conclusion. Further, there is no basis whatsoever provided in the order dismissing the appeal filed by the assessee. In this regard, it is relevant to note the following observations of the Hon'ble jurisdictional High Court in Shivsagar Veg. Restaurant vs ACIT; [2009] 317 ITR 433 (Bombay):

*"10. The basic rule of natural justice requires recording of reasons in support of the order. The order has to be self-explanatory and should not keep the higher court guessing for reasons. Reasons provide live link between conclusion and evidence that vital link is a safe guard against arbitrariness, passion and prejudice. Reason is a manifestation of mind of adjudicator. It is a tool for judging the validity of the order under challenge. It gives opportunity to the higher court to see whether or not the adjudicator has proceeded on the relevant consideration, material and evidence."*

15. Therefore in view of the above, we deem it appropriate to remand this issue to the file of learned CIT(A) for *de novo* adjudication. Needless to mention that no order shall be passed without affording reasonable opportunity of being heard to both parties. Accordingly, ground No. 3(d) raised in assessee's appeal is allowed for statistical purposes.



16. In view of the aforesaid findings, the other grounds raised in the present appeal need no separate adjudication.

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

Order pronounced in the open Court on 03/01/2023

**Sd/-**  
**GAGAN GOYAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 03/01/2023**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai