IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1981/Mum./2023

(Assessment Year : 2017–18)

Kavita Jasjit Singh
2nd Floor, Corporate Finance
Scitech Centre, 7, Prabhat nagar
Patel Estate Road, Jogeshwari (West)
Mumbai 400 102 PAN – ANDPS0896C ..... Appellant

v/s

Commissioner of Income Tax (Appeals)
Central Circle–7(3), Mumbai ..... Respondent

Assessee by : Shri Ketan Ved a/w
Shri Abdul K. Jawadwala
Revenue by : Shri P.D. Chougule

Date of Hearing – 11/09/2023	Date of Order – 14/09/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 02/03/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("*learned CIT(A)"*), which in turn arose from the penalty order passed under section 270A of the Act, for the assessment year 2017-18.

2. The present appeal is barred by 28 days. In its affidavit seeking condonation of delay, filed along with the present appeal, the assessee

submitted that there was a search conducted on the assessee and her family and their owned entities on 31/03/2023, which continued till 04/02/2023, and thus due to immense pressure and demand associated with ongoing such operation during that period, the assessee inadvertently overlooked the email regarding the impugned order. The assessee further submitted that she was occupied with gathering all the requisite information and documentation which were asked during the course of search, which resulted in the unintended delay in filing the present appeal. The assessee, in the affidavit, further submitted that she was under tremendous mental pressure and agony which led to an unintentional oversight of the impugned order received on the email. Accordingly, 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 prayer for condonation of delay in filing the appeal.

4. Having considered the submissions of both sides and perused the material available on record, we find that 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 submissions made in the affidavit filed by the assessee, 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:-

"GROUND I: THE LEARNED CIT(A) FAILED TO FOLLOW PRINCIPLES OF NATURAL JUSTICE BY NOT ALLOWING ANY PERSONAL HEARING

1. The learned CIT(A) failed to follow the principles of natural justice by passing the order u/s 250 exparte, despite the adjournment was sought by the appellant.

2. The Learned CIT(A) failed to uphold the principle of natural justice by passing the order u/s 250 before the date till which adjournment was sought.

3. The Learned CIT(A) failed to uphold the principle of natural justice by not expressly denying the adjournment nor has communicate the reason to do the same. The appellant prays that the order passed u/s 250 shall be treated as bad in law and strucked down.

GROUND II: WITHOUT PREJUDICE TO THE GROUND I ABOVE, THE LEARNED CIT(A) ERRED IN STATING THAT APPELLANT DID NOT ASK FOR ANY PERSONAL/VIRTUAL HEARING DURING THE PENALTY PROCEEDINGS BEFORE AO.

1. The learned CIT(A) erred in not reflecting to the appellant submission dated 5th January, 2022 to the AO wherein a request for virtual hearing was expressly made.

2. The learned CIT(A) failed to appreciate the fact that mere opportunity of submitting replies online and not giving any virtual hearing cannot be said that the opportunity of being heard was given to appellant.

3. Appellant prays that order u/s 270A passed by the AO and order u/s 250 passed by CIT(A) without giving virtual hearing shall be treated as bad in law and strucked down.

GROUND III: WITHOUT PREJUDICE TO GROUND I AND GROUND II above, LEVYNG OF PENALTY OF RS.1.75,824/- U/S. 270A OF THE ACT.

1. On the facts and circumstances of the case and in law, the learned CIT(A) and AO failed to appreciate the fact that assessee offering the income for tax

before it came to the notice of Assessing officer passing the order u/s. 143(3), and without waiting for any show cause notice on the same.

2. On the facts and circumstances of the case and in law, the learned CIT(A) and AO failed to appreciate the fact that income was not actually received by the assessee during the year nor any communication about the accrual was available to the assessee before filing the return of income, thus there is no case of underreporting of income is there.

3. On the facts and circumstances of the case and in law, the learned CIT(A) and AO erred in assuming that Refund received in subsequent year was a sufficient event wherein assessee could have offered the Interest, as refund received in subsequent year was short than claimed in the return and no computation relating to it or adjustment of refund (to the extent received short) was given. Thus, it was impossible on part of assessee to get the information about the interest on refund.

4. On the facts and circumstances of the case and in law, the learned CIT(A) and AO failed to appreciate the fact that no assessee will attempt to evade or underreport those incomes which are readily available with assessing officer and displayed on the Form 26AS, Annual Information Return.

5. On the facts and circumstances of the case and in law, the learned CIT(A) and AO failed to appreciate the fact that Income Tax refund being contingent asset in nature, as per accounting standards also, it is accounted as and when it is actually received, and interest being directly linked to it also becomes an contingent asset, therefore unless and until it is not received actually, or no information about its adjustment against any past demands is given to the assessee, assessee couldn't offer it for tax.

6. On the facts and circumstances of the case and in law, the learned CIT(A) and AO has stated that the appellant chose to disclose the interest income not offered by it in the return of income only after the case was selected for scrutiny and notices under section 143(2) and 142(1) were served.

7. The learned CIT(A) and AO erred in speculating a scenario that if the scrutiny assessment not initiated, the appellant would not have offered it for tax. Deciding the matter by speculating something which never happened is not valid in law.

8. The Appellant denies such liability and prays that the penalty levied u/s. 270A be deleted."

6. During the hearing, the learned Authorised Representative ("*learned AR*") wishes not to press the application seeking admission of additional ground. Accordingly, the said application is dismissed as not pressed.

7. The only dispute raised by the assessee, in the present appeal, is against the levy of penalty under section 270A of the Act.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and for the year under consideration filed the return of income on 30/10/2017, declaring a total income of Rs.1,88,68,990. The return filed by the assessee was selected for scrutiny and vide order dated 27/11/2019, passed under section 143(3) of the Act the scrutiny assessment was concluded assessing the total income of the assessee at Rs.1,98,41,907. As the assessee had received interest on income tax refund amounting to Rs.9,72,915, which was not considered at the time of filing the return of income, notice under section 274 read with section 270A of the Act was issued to the assessee asking the assessee to show cause as to why penalty under section 270A of the Act be not levied. In response thereto, the assessee submitted that during the scrutiny assessment proceedings, she had voluntarily offered the interest of income tax refund without any show cause notice being issued on the same and therefore it cannot be considered as an attempt to under-report the income. The assessee further submitted that while filing the return of income she neither had any intimation regarding the refund amount nor she had received any refund by cheque or ECS in a bank account. The Assessing Officer (*"AO"*) vide penalty order dated 05/01/2022, passed under section 270A of the Act did not agree with the submissions of the assessee and held that there is a difference between the income returned by the assessee and the income assessed vide assessment order passed under section 143(3) of the Act and thus satisfies the basic requirement for initiation

of penalty under section 270A of the Act. The AO further held that the assessee chose to disclose the interest income not offered in the return of income only after the case was selected for scrutiny. Accordingly, the AO held that the assessee had under-reported her income and accordingly levied a penalty of Rs.1,75,824, under section 270A of the Act.

9. In the appeal before the learned CIT(A), despite notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex−parte order dated 02/03/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

10. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that the return filed by the assessee was selected for limited scrutiny through CASS only for examination of the issue of foreign assets and accordingly, statutory notices under section 143(2) as well as 142(1) of the Act were issued and served on the assessee. From the paper book filed by the assessee, we find that during the assessment proceedings, the AO sought various information such as details of all the investments, and sources of such investments along with the supporting documents, which were duly responded to by the assessee. We find that during the scrutiny assessment proceedings, the assessee on the basis of Form 26AS, as available on the date, suo moto furnished a revised computation and offered the interest on income tax refund to tax. As per the assessee, while filing her return of income, she neither received any income tax refund by cheque or by ECS in a bank account nor there was any

intimation regarding the determination of the refund amount. Further, even as per Form 26AS, available at the time of filing the return of income, she did not have the information of any such income tax refund and interest thereon. Thus, the interest on income tax refund was not offered to tax while filing the return of income. The Revenue could not bring any material on record to controvert the aforesaid submissions of the assessee.

11. In this regard, it is pertinent to note that the return filed by the assessee was selected for limited scrutiny only for the purpose of examination of foreign assets vide notice dated 09/08/2018, issued under section 143(2) of the Act and no notice was issued regarding interest of income tax refund received by the assessee. Therefore, it is not a case, wherein pursuant to scrutiny assessment proceedings the assessee decided to offer the income tax. Thus, we do not find any merits in the findings of the AO that the assessee chose to disclose the interest only after the case was selected for limited scrutiny. Further, unless the refund is received, the interest element of the refund cannot be determined. It is also pertinent to note that the *suo moto* declaration of interest on income tax refund, as offered by the assessee during the assessment proceedings, has been accepted vide order passed under section 143(3) of the Act without modification of the revised computation in this regard. Therefore, in view of the aforesaid circumstances, we are of the view that the explanation of the assessee for not offering the interest on income tax refund while filing its return of income is *bona fide*, and thus, the non-declaration of interest on income tax refund cannot be said to be under-reporting of income by the assessee within the meaning of section 270A of the

Act. Accordingly, we direct the AO to delete the penalty levied under section 270A of the Act in the present case. As a result, ground no. 3 raised in assessee's appeal is allowed.

12. Grounds no.1 and 2 were not pressed during the hearing, accordingly the same are dismissed as not pressed.

13. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 14/09/2023

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

MUMBAI, DATED: 14/09/2023

Copy of the order forwarded to:

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

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai