

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

. ITA No. 514/CHD/2022

. Assessment Year :2017-18

Deepak Budhani S/o Shri Valiram Budhani C/o Dhiman Bansal & Associates, 68, Shiv Shakti Colony, Pinjore -134102		Income Tax Officer, Wrd-1, Panchkula
PAN NO: ABCPB0025D		
Appellant		Respondent

Assessee by : Smt. Neelam Dhiman, CA  
Revenue by : Smt. Amanpreet Kaur, Sr.DR  
Date of Hearing : 07.09.2022  
Date of Pronouncement : 07.09.2022

**Order**

**Per Sudhanshu Srivastava, Judicial Member:**

This appeal has been preferred by the assessee against the order dated 30.05.2022 passed u/s 250 of the Income Tax Act, 1961 [in short 'the Act'] by the National Faceless Appeal Centre, Delhi [NFAC] for assessment year 2017-18.

2.0 The brief facts of the case are that the assessee was an employee of M/s HMT Ltd. (Tractor Division), Pinjore and he had received certain payments under the Voluntary Retirement Scheme (VRS) on the closure of the Tractor Division. The original return of income

declared taxable income of Rs. 50,22,696/- and the return was processed u/s 143(1) of the Act. Subsequently, the assessee came to know that certain amounts received under the VRS were exempt in terms of provisions of section 10(10B) of the Act. Accordingly, the assessee filed an appeal against the intimation passed u/s 143(1) of the Act and submitted before the Ld. First Appellate Authority that the assessee was an illiterate person not aware of the fact that the amount received under VRS was exempt. This appeal before the Ld. NFAC was delayed by 2 years 5 months and 17 days. The Ld. NFAC observed that the assessee could not demonstrate any sufficient cause for the delay in filing the appeal and proceeded to dismiss the assessee's appeal *in limine*. Against this *in limine* dismissal by the Ld. NFAC, the assessee has now approached this Tribunal and has challenged the impugned order by raising the following grounds of appeal:-

- 1. That the order of Ld. CIT (A) is against the law and facts of the case.*
- 2. The learned CIT(A) erred in dismissing appeal that there was no genuine reason of condonation of delay whereas Orders in his colleague cases were passed in Jan 2020 to March 2020 and on when it comes to his knowledge, he immediately filed the appeal in the month of March 2020, even on 25.03.2018 HMT Ex-employee Association represented the case to Joint Commissioner in written but no response or guidance was provided to employees. A jobless person does not want to stuck in litigation by claiming wrong refund so he has not filed any appeal. So, delay be condoned and income of Rs.*

*42,49,441 may please be reduced and Tax of Rs. 10,28,003 be refunded along with due interest.*

*3. The learned CIT(A) erred in dismissing appeal because tax was not deductible or payable on closure compensation announced by the Central Govt in public interest for the employees of HMT Ltd. Tractor Division. As per Article 265 of Constitution no tax shall be levied or collected except by authority of law. If the claim of assessee is not allowed then it is the case of unjust enrichment of Income Tax department, So, delay be condoned and income of Rs. 42,49,441 may please be reduced and Tax of Rs. 10,28,003 be refunded along with due interest.*

*4. That the Hon'ble Jurisdictional Punjab and Haryana High Court in CWP-10774-2021 also took similar views that tax is not payable in case of VRS Benefits so delay be condoned and claim of appellant for income of Rs. 42,49,441 may please be reduced and Tax of Rs. 10,28,003 be refunded along with due interest.*

*5. That the appellant craves leave to add or amend the Grounds of appeal before the appeal is finally heard and disposed of.*

3.0 At the outset, the Ld. AR submitted that the assessee did not claim the amount of VRS as exempt in the return of income for the simple reason that the assessee was an illiterate person who did not have any knowledge of the provisions of the Income Tax Act and also did not have any access to expert professional advice and, therefore, it was under these circumstances that the assessee had filed the return of income without claiming the benefit of exemption under section

10(10B) of the Act. It was further submitted that it was only later on, when the assessee came to know that assessments of his erstwhile fellow workers had been completed with they being granted the benefit of exemption u/s 10(10B) of the Act that he chose to file the appeal before the Ld. NFAC, although, belatedly but the reason for delay was not intentional but was rather due to the assessee's unawareness regarding the provisions of Income Tax Act. The Ld. AR also submitted that the Ld. NFAC, in some cases pertaining to erstwhile fellow co-workers of the assessee, has allowed the benefit of exemption. To support this contention, she drew our attention to order of the Ld. NFAC, Delhi in the case of Shri Raj Kumar Singh vide order dated 18.08.2021 for assessment year 2017-18 wherein the assessee had been allowed the benefit of exemption u/s 10(10B) of the Act vis-a-vis the amount received on VRS. Referring to the said order, the Ld. AR pointed out that in this case, the Ld. NFAC had condoned a delay of 31 months and 10 days and had then allowed the benefit of exemption.

3.1 Reliance was also placed on the judgement of the Hon'ble Punjab & Haryana High Court in the case of Tarcitius Dungdung Vs. Principal Commissioner of Income Tax in CM-12168-CWP-2021 [CWP No. 10774 of 2021(O&M)] vide order dated 12.11.2021 and it was submitted that in this case, although, the Hon'ble Punjab & Haryana High Court had dismissed the assessee's Writ petition challenging the

order passed u/s 264 of the Act wherein the Ld. CIT had rejected the assessee's claim of exemption u/s 10(10B) of the Act , the Hon'ble Punjab & Haryana High Court was pleased to grant liberty to the petitioner assessee to move an application u/s 119 of the Act before the CBDT with a further observation that in case such application is made within a period of 15 days from the date of receipt of certified copy of the order, the application shall not be rejected on the ground of delay.

3.2 The Ld. AR submitted that under the aforementioned circumstances, the Ld. NFAC should have condoned the delay and should have allowed the appeal of the assessee on merits.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) placed reliance on the observation and findings of the Ld. NFAC and argued that the assessee could not demonstrate any sufficient cause for delay in filing the appeal before the Ld. NFAC and, therefore, the assessee's appeal had rightly been dismissed *in limine*.

5.0 I have heard the rival submissions and have also perused the material on record. The facts are not in dispute at all and the only issue before me at this present juncture is the question as to whether the Ld. NFAC was justified in not condoning the delay of 2 years, 5 months and 17 days. It is settled law that the appellate authorities have power to allow relief to the assessee to which he is otherwise

entitled, even though, no claim has been made by the assessee in the return of income.

5.1 In Writ Petition No. 783 of 2012 in the case of Sanchit Software and Solutions Pvt. Ltd Vs. Commissioner of Income Tax and Others, Hon'ble Mumbai High Court held that in any civilized system, the assessee is bound to pay the tax which he liable under the law to the Government. The Government on the other hand is obliged to collect only that amount to tax which is legally payable by an assessee. The entire object of the administration of tax is to secure the Revenue for the development of the country and not to charge assessee more tax than which is due and payable by the assessee. The Hon'ble High Court further observed that as far as back in 1955, the Central Board of Direct Tax had issued a Circular directing AO not to take advantage of assessee's ignorance and / or mistake. Article 265 of the Constitution of India also provides that no tax shall be levied or collected except by the authority of law.

5.2 In view of the above, I deem it expedient that in the interest of substantial justice, the delay be condoned. I, accordingly, direct the Ld. NFAC to condone the delay of 2 years, 5 months and 17 days and adjudicate on assessee's appeal on merits in accordance with law preferably within a period of one year from the date of receipt of this order after giving due opportunity to the assessee to present his case.

5.0 In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 07.09.2022.

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**Judicial Member**

**Dated : 07.09.2022**

Copy of the order forwarded to :

1. The Appellant
  2. The Respondent
  3. CIT
  4. The CIT(A)
  5. DR, ITAT, CHANDIGARH
  6. Guard File
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By order,  
Assistant Registrar