

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

**ITA No.3385/M/2015  
Assessment Year: 2009-10**

Mr. Rajni Castelino, Row House No.7/8, Shiv Kutir, Plot No.105/106, Sector-29, Vashi, Mumbai – 400 703 <b>PAN: AACPC0069K</b>	Vs.	The Income Tax Officer- 22(3)(3), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri, A.P. Sinha, A.R.  
Revenue by : Shri Rajesh Ojha, D.R.

Date of Hearing : 20.10.2016  
Date of Pronouncement : 30.11.2016

**ORDER**

**Per C.N. Prasad, Judicial Member:**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-26, Mumbai [(hereinafter referred to as the CIT(A)]dated 31.03.2015 for the assessment year 2009-10 arising out of the assessment order passed under section 144 read with section 147 of the Act.

2. At the outset, the Ld. Counsel for the assessee submits that the Ld. CIT(A) dismissed this appeal in limine observing that the assessee did not file condonation petition for delay of four days. He further submits that the condonation petition could not be filed because there was change in counsel and the new counsel could not file the condonation petition for the delay of 4 days. Therefore the Ld. Counsel requested for restoring the matter back to the

Ld. CIT(A) in the interest of justice with a direction to accept the condonation and dispose off the appeal after considering the condonation petition.

3. The Ld. D.R. has no serious objection in restoring the appeal to the file of the Ld. CIT(A).

4. On hearing both the parties and taking the totality of facts and circumstances into consideration, we are of the view that in the interest of justice this appeal should be restored to the file of the Ld. CIT(A) and the assessee is free to submit the condonation petition for the delay of 4 days in filing the appeal before the Ld. CIT(A) and the Ld. CIT(A) shall decide the appeal considering the petition for condonation of delay in accordance with law after giving reasonable opportunity of hearing to the assessee. Thus we restore the appeal to the file of the Ld. CIT(A).

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

**Order pronounced in the open court on 30.11.2016.**

**Sd/-**  
**(N.K. Pradhan)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(C.N. Prasad)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 30.11.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.