

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

**ITA No. 422/Mum/2012
(A.Y. 2001-02)**

Shri Satish Mandowara 74G, Mangal Karni, Siddarth Nagar, Goregaon (W), Mumbai-400 062	Vs.	The Dy. Commissioner of Income Tax, Central Circle- 39, Mumbai
Appellant	..	Respondent
PAN No. ACWPM 3495 P		

Assessee by : Bhavin Shah, AR

Revenue by : V Justin, DR

Date of hearing: 27-09-2010 **Date of pronouncement :** 04-04-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax-41, Mumbai [in short CIT(A)], in appeal No. CIT(A)-41/DCCC-39/IT-993/10-11 dated 18.11.2011. The set aside Assessment was framed by the Deputy Commissioner of Income Tax, Central Circle-39, Mumbai (in short ‘DCIT’) for the A.Y. 2001-02 vide his order dated 27.09.2010 under section 143(3) r.w.s 254 of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The first issue in this appeal of assessee is against the order of CIT(A) in not condoning the delay in filing the appeal: -.

*"1. The commissioner of Income-tax (Appeals)-
41 (“the CIT(A)”) erred in not condoning the delay in
filing the appeal.”*



3. Briefly stated facts are that the assessment order along with demand notice under section 156 of the Act was served on the assessee on 27-09-2010. The due date of filing of appeal was on or before 30-10-2010. The appeal, however, was filed on 15-03-11, which is delayed by four and half months. The assessee before CIT(A) filed condonation petition with the reasons that the assessment order was delivered at the residence of the assessee when he was not in town and the family members were not aware about the statutory provisions and kept the assessment order which remain unchecked. Accordingly, there was delay. But the CIT(A) has not condoned the delay and not admitted the appeal and dismissed in limine by observing in Para 2.2 as under:-

“2.2 In totality of the facts and circumstances of the case and decisions of the Hon’ble Courts, it is held that there was no reasonable cause with the assessee to explain the delay for the filing of appeal, hence, not admitted and dismissed.”

4. Therefore, CIT(A) adjudicated the issue on merits and for which the assessee has raised following ground No. 2, 3 and 4:-

“2. The CIT(A) erred in confirming the addition of ₹ 99,00,000/- in respect of the alleged unexplained cash credits appearing in the bank account without appreciating the facts of the case of the appellant.

3. The CIT(A) erred in confirming the household expenses at ₹ 1,48,000/- and thereby making addition of ₹ 1,00,000/- which is not based on any kind of evidence.

4. The CIT(A) further erred in confirming the addition of ₹ 12,00,000/- in addition to disclosed



income from business activities as well as activities of giving accommodation entries..”

5. When this was pointed out to the learned Sr. Departmental Representative that once the appeal is dismissed in limine, the CIT(A) cannot adjudicate the issues on merits because the appeal is not at all admitted. He could not argue anything on this. We find that this issue of delay of condonation is covered in favour of assessee and against Revenue by the decision of Hon'ble Madras High Court in the case of Vijayeswari Textiles Ltd. Vs. CIT [2002] 256 ITR 560 (Madras), wherein Hon'ble Madras High Court has observed vide Para 7 as under: -

“7. Matters relating to condonation of delay are indeed discretionary and are normally left to the Tribunal and this court will not ordinarily interfere with the discretion. In this case, as we have already pointed out, the Tribunal did not stop with the order declining to condone the delay, but considered the matter on the merits and has practically treated the appeal as being properly before it and has answered the question brought before it with reference to the material placed on record. It is in the circumstances; we hold that the Tribunal was in error in not condoning the delay. The question regarding the correctness of the Tribunal's holding that the delay is not to be condoned is therefore answered in favour of the assessee and against the Revenue. The question regarding the correctness of the Tribunal's holding on the allowability of the additional amounts paid as bonus is also answered in favour of the assessee and against the Revenue.”



6. In view of the above factual position and fact that the CIT(A) has not condoned the delay despite the fact that the assessee has given the reason in its petition stating that the assessment order was delivered at the residence of the assessee when he was not in town and the family members were not aware about the statutory provisions and hence, they kept assessment order which remain unchecked. We find that the cause cited by assessee is reasonable and hence, we condoned the delay and directed the CIT(A) to admit the appeal. Since, the CIT(A) adjudicate the issue on merits without any basis, we restore the issue on merits back to his file to adjudicate the issues raised by assessee before the CIT(A) for fresh adjudication on merits. Accordingly, the order of CIT(A) is set aside and the matter is restored back to the file of the CIT(A) for fresh adjudication of issues on merits. The appeal of the assessee is allowed for statistical purposes.

7. In the Result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04-04-2018.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 04-04-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI