

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

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.435/M/2016
Assessment Year: 2011-12**

Shri Surajmal C Dakle HUF, 24/26, 2 nd Floor, Anand Mahal, Babulnath Road, Mumbai - 400 007 PAN: AAHHS 6534A	Vs.	Income Tax Officer- 16(1)(2), R.No.204, Matru Mandir, Tardeo Road, Mumbai - 400 007
(Appellant)		(Respondent)

**ITA No.434/M/2016
Assessment Year: 2011-12**

Shri Surajmal C Dakle HUF, 24/26, 2 nd Floor, Anand Mahal, Babulnath Road, Mumbai - 400 007 PAN: AAHHS 6534A	Vs.	Income Tax Officer- 16(1)(2), R.No.204, Matru Mandir, Tardeo Road, Mumbai - 400 007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Raturaj H. Gurjar, A.R.
Revenue by : Shri V. Justin, D.R.

Date of Hearing : 03.04.2018
Date of Pronouncement : 03.04.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled two appeals one challenging the quantum addition and second against the sustenance of penalty have been preferred by the assessee against the order

dated 18.11.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

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2. The appeal filed by the assessee raising various legal and factual grounds against the order of the Ld. CIT(A). The issue raised in ground No.1 is against the order of Ld. CIT(A) not granting/condoning the delay in filing the appeal before the Ld. CIT(A) without appreciating the fact that there was a genuine and reasonable cause for delayed filing of appeal. The Ld. Counsel, at the outset, submitted before the Bench that the delay in filing the appeal has taken place due to mother of karta of the assessee not keeping good health and considerable time was spent in the medical checkup of ailments of diabetic and hypertensions. Thus the reason attributable for late filing of appeal constitutes reasonable cause which has not been considered by the Ld. CIT(A) and thus the assessee was denied justice as the case of the assessee was dismissed in limine for the technical reason of not admitting the appeal due to delay which was not condoned. The Ld. A.R. submitted before the Bench that the statute has provided mechanism so that no one is condemned unheard but in the present case assessee is denied the right of hearing as the appeal was dismissed in limine thereby causing the grave injustice to the assessee. Finally, the Ld. A.R. prayed that the delay which was genuine and for the reasons beyond the control of the assessee and therefore, the

same may be condoned and the Id CIT(A) be directed to dispose the appeal on merits.

3. The Ld. D.R., on the other hand, opposed the arguments of Ld. A.R. by submitting that the reasons pointed out by the Ld. A.R. for delay in filing the appeal were not sufficient and delay was not worth condoning by relying on the order of Ld. CIT(A).

4. Having heard the rival parties and perusing the relevant material on record, we find that the assessee has cited the ailments of the old mother of the karta due to which the karta of the family was busy and the appeal could not be filed in time. The Ld. CIT(A) has dismissed the appeal in limine by observing that the assessee has sufficient time to file the appeal even after discharge of the ailing mother of the karta from the hospital but the assessee has failed to do so. The intention of the behind the scheme of providing in the Act for appeal is to grant assessee an opportunity to put across the grievances so that the justice is done according to the principles of natural justice after affording a good and reasonable opportunity to the assessee. In the present case, as is clear from the perusal of the said appellate order that the appeal has not been decided on merits but dismissed in limine as the assessee has not filed the appeal within the due time for the reasons which were found to be not good and sufficient. However, in the interest of justice, we feel earnestly that assessee should be granted one more opportunity to present his case before the Ld. CIT(A) so that

the issue is decided afresh. We, therefore, restore the appeal of the assessee to the file of the Ld. CIT(A) with the direction to consider the issue of condonation of delay and if the delay is condoned then decide the appeal on merits after allowing a reasonable opportunity to the assessee. Since we have restored the appeal to the file of the Id CIT(A) there is no need for adjudication of other grounds raised by the assessee.

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

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6. The assessee has filed this appeal challenging the confirmation by CIT(A) as levied by the AO u/s 271(1)(c) of the Act. Since we have sent back the quantum appeal to the file of CIT(A) , we restore this appeal also to the file of the Ld. CIT(A) for deciding it afresh after giving a reasonable opportunity to the assessee.

7. In the result, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 03.04.2018.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 03.04.2018.

* 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.