



ITA No.3099/Mum/2016
Khar Gymkhana
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.3099/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Khar Gymkhana 13 th Road, Khar (W) Mumbai-400 0052	बनाम/ Vs.	Income Tax Officer (Exemption)-II (1) Piramal chambers 4 th Floor, Parel Mumbai-400 012
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAATK-5163-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Anil Sathe, Ld.AR
Revenue by	:	Ram Tiwari, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	19/07/2018
घोषणा की तारीख / Date of Pronouncement	:	25/07/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2011-12 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-1 [CIT(A)], Mumbai, *Appeal No.CIT(A)-I/E-II(110)/2014-15* dated 11/03/2016. The assessment for impugned AY was framed by Ld. *Income Tax Officer (Exemption)-II(1), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961* on 14/03/2014 wherein the income of the



assessee has been assessed at Rs.390.56 Lacs after certain additions / disallowances as against 'Nil' income filed by the assessee on 30/09/2011 since the assessee failed to supply requisite information / explanation during assessment proceedings.

2. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 11/03/2016 wherein the assessee's appeal got dismissed for want of condonation of 22 days in filing the appeal before Ld. first appellate authority. Aggrieved, the assessee is in further appeal before us.

3. The only plea as raised before us by Ld. Authorized Representative for Assessee [AR], *Shri Anil Sathe* is condonation of delay and consideration of matter on merits by Ld. first appellate authority. In support, a letter dated 16/07/2018 & affidavit dated 02/08/2017 of the Trustee of the assessee, explaining the reasons for delay, has been placed on record. It has also been submitted that the assessee was diligent in filing the appeals on various other occasions and there was genuine reason for delay in filing the present appeal before Ld. first appellate authority. The same has been controverted by Ld. Departmental Representative [DR], *Shri Ram Tiwari*, by submitting that the assessee was grossly negligent in making any representation before any of the lower authorities.

4. We have carefully heard the rival contentions and perused relevant material on record. It is observed that the assessee has not made any concrete representation before either of the lower authorities. At the same time, the assessee was diligent in filing the appeals for other years before first appellate authority as well as before this tribunal for other



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years, which is evident from the chart placed on record. The delay, in the affidavit, has been attributed to *finalization of accounts & audit work*, which is very general in nature. However keeping in view the observations of Apex Court in *Collector, Land Acquisition Vs. Mst. Katiji & Others [167 ITR 471]* and keeping in view the quantum of delay, we condone the same. However, since the assessee failed to make requisite submissions before Ld. AO, we deem it fit to restore the matter back to the file of Ld. AO with a direction to the assessee to substantiate his claims failing which Ld. AO shall be at liberty to adjudicate the same on the basis of material available on record.

5. Resultantly, the assessee's appeal stand partly allowed for statistical purposes in terms of our above order.

Order pronounced in the open court on 25th July, 2018

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25.07.2018

Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai