

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी"
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 3125/मुं/2019 (नि.व.2014-15)
ITA NO.3125/MUM/2019 (A.Y.2014-15)

Mrs.Nutan Ajit Dandekar, A-403, Damodar Apartments, Manvelpada Road, Opp.Morya Nagar, Virar East 401 305	बनाम/ Vs.	The Income Tax Officer, Ward 4(3), Room No.30, A-Wing, 6 th Floor, Aashar IT Park, Wagle Estate, Thane 400 604
PAN/GIR No: AHNPD9429L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Ms Kavita P. Kaushik

सुनवाई की तारीख/ Date of Hearing	:	15/09/2020
घोषणा की तारीख / Date of Pronouncement	:	15/09/2020

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) – 3, Thane [in short 'the CIT(A)'] dated 13/03/2019 for the assessment year 2014-15.

2. Notice of hearing of this appeal was sent to the assessee by RPAD. Despite notice neither the assessee nor any authorized representative of the assessee appeared in the Court at the time of hearing.

3. Ms. Kavita P. Kaushik, representing the department vehemently supported the impugned order and prayed for dismissing the appeal of assessee.

4. A perusal of the case file shows that the Assessing Officer vide order dated 22/11/2016 passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act) has made addition of Rs.3,70,225/- on account of undisclosed interest income. Aggrieved against the assessment order, the assessee filed appeal before the CIT(A). The appeal was time barred by three months and fifteen days. The assessee filed an application seeking condonation of delay on the ground that the assessee is an illiterate lady and is a petty fish seller. It is further urged that the assessee is suffering from various chronic ailments. The CIT(A) rejected the reasons cited for delay on the ground that the application is not supported by an affidavit and documentary evidence. The CIT(A) dismissed the appeal being barred by limitation.

5. Heard. Orders of the authorities below and the material available on record before the Tribunal examined. The Hon'ble Supreme Court of India in the case of *Ram Nath Sao vs. Gobardhan Sao & Others reported as 2002 (3) SCC 195* has held that condonation of delay should be the rule and refusal an exception. The expression "sufficient cause" within the meaning of section 5 of the Limitation Act or Order 22, Rule-9 of the CPC or any other similar provision should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bona-fide is imputable to a party. There cannot be a straightjacket formula for accepting or rejecting explanation furnished for delay caused in taking steps. Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by

slipshod order in over jubilation of disposal drive. The Hon'ble Apex Court further held that a pedantic and hyper-technical view of the explanation furnished should not be taken in rejecting the explanation furnished, when stakes are high and/or arguable points of facts and law are involved. While considering the matter, the court has to strike a balance between resultant effect of the order it is going to pass on the parties either way. Similar view has been expressed by the Hon'ble Supreme Court of India in various judgements on the issue of condonation of delay. In the light of above decision rendered by the Hon'ble Apex Court, delay in filing of first appeal is condoned. The appeal is restored to the file of CIT(A) for adjudication of issues on merits.

6. The assessee is directed to appear before the CIT(A) and co-operate in first appellate proceedings. The CIT(A) shall grant reasonable opportunity of hearing to the assessee, in accordance with law while adjudicating the appeal.

7. In the result, appeal of the assessee is allowed for statistical purpose, in the terms aforesaid.

Order pronounced in the open Court on Tuesday the 15th day of September, 2020.

Sd./-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 15/09/2020
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai