

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

माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.4028/Mum/2019
(निर्धारण वर्ष / Assessment Years: 2011-12)

Horizon Dream Homes Pvt. Ltd. A-1003, Horizon Homes Liberty Garden, Cross Road No.3 Malad (W), Mumbai – 400064	बनाम/ Vs.	ACIT-12(2)(2) Aaykar Bhawan, M.K.Road Mumbai - 400020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACCH-2442-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Shri Nitin Furia-Ld. AR
Revenue by	:	Shri A.Mohan-Ld. CIT-DR
सुनवाई की तारीख/ Date of Hearing	:	29/12/2020
घोषणा की तारीख / Date of Pronouncement	:	29/12/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year 2011-12 contest the order of learned first appellate authority on certain grounds of appeal.
2. The Registry has noted a delay of 13 days in filing of the appeal, the condonation of which has been sought by the assessee vide condonation petition dated 05/11/2020 as supported by the affidavit of assessee’s director. It has, inter-alia, been submitted that assessee was in the process of rectification proceedings of the

impugned order. The Ld. CIT-DR opposed the condonation of delay. However, going by the condonation petition as well as submissions, we are inclined to condone the delay and admit the appeal.

3. The Ld. AR has submitted that the assessee's appeal has been dismissed by learned CIT(A) merely on technical ground by observing that Form No.35 has been not verified either by Managing Director or by any other Director, as required by law. The Ld. AR drew attention to Form No.35 to submit that the form was digitally signed by one of the director since the assessee did not have any Managing Director. The same was in accordance with the requirement of law. The assessee objected to dismissal of appeal vide letter dated 22/05/2019. Further, the system did not allow fresh filing of appeal which was brought to the notice of Ld. CIT(A) vide letters dated 19/06/2019, 08/07/2019 as well as 16/08/2019. However, no opportunity of hearing was given to the assessee and the appeal was dismissed merely on technical grounds.

4. Upon careful consideration of material on record, we concur with the submissions made by Ld. AR before us. It is evident that Form No. 35 was digitally signed as per the requirement of law. The Ld. CIT(A) was not justified in rejecting the appeal merely on technical ground without affording opportunity of hearing to the assessee. Accordingly, we direct Ld. CIT(A) to admit the assessee's appeal and adjudicate the same on merits after affording due opportunity of hearing to the assessee.

5. The appeal stands allowed for statistical purposes.

Order pronounced on 29th December, 2020.

Sd/-

(C.N.Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 29/12/2020

Sr.PS, Sudip Sarkar

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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**