

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA
VIRTUAL HEARING**

[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member & Shri Aby T. Varkey, Hon'ble Judicial Member]

I.T.A. No. 2024/Kol/2019

Assessment Year: 2014-15

Shri Pawan Kumar Modi.....Appellant

C/o. Rajesh Mohan & Associates

Unit No. 18

5th Floor

Bagati House

34, Ganesh Chandra Avenue

Kolkata - 700 013

[PAN : AEXPM 7346 C]

Income Tax Officer, Ward-62(2), Kolkata.....Respondent

Appearances by:

Shri S.M. Surana, Advocate, appeared on behalf of the assessee.

Shri Jayanta Khanra, JCIT, D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : January 22nd, 2020

Date of pronouncing the order : January 28th, 2021

ORDER

Per J. Sudhakar Reddy, AM :-

This Bench of the Tribunal had originally disposed off this case vide order dt. 13/11/2020. We have recalled the impugned order dt. 13/11/2020, while disposing M.A. No. 96/Kol/2020, order dt. 22/01/2021 and reposted the case for fresh hearing. Thus, the case is before us.

2. After hearing rival contentions, we find that the ld. CIT(A) has refused to condone the delay in filing of the appeal before him. This is challenged before us, by way of appeal. There is no delay in filing of the appeal before the Tribunal. The ld. Pr. CIT, who has to issue Form No.-3 under "Vivad Se Vishwas Scheme" has supposedly stated that the Tribunal should condone the delay in filing of the appeal before the ld. CIT(A) and then only he would issue Form No. 3 under the "Vivad Se Vishwas Scheme". This in our view is not the correct legal position. A dispute before the ITAT is pending disposal. When the action of the ld. CIT(A) in not condoning the delay is the issue that has to be adjudicated by the ITAT, then to state that this dispute has to be adjudicated prior to the issue of certificate in Form No. 3, under the "Vivad Se Vishwas Scheme", is not correct.

3. Be it as it may, as the assessee has filed for settlement of disputes under “*Vivad Se Vishwas Scheme*”, we record that the appeal in ITA No. 2024/Kol/2019, is admitted by this Tribunal. On hearing both the parties and perusing the records, we also hold that the ld. CIT(A) was wrong in not condoning the delay of 5 months in filing of the appeal by the assessee before him. Hence, we condone the delay. The registry is directed to post the case for further hearing on merits. This interim order is passed to enable the assessee to avail the “*Vivad Se Vishwas Scheme*”.

4. Ordered accordingly.

Kolkata, the 28th day of January, 2021

Sd/-
[Aby T. Varkey]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 28.01.2021
{SC SPS}

Copy of the order forwarded to:

1. Shri Pawan Kumar Modi
C/o. Rajesh Mohan & Associates
Unit No. 18
5th Floor, Bagati House
34, Ganesh Chandra Avenue
Kolkata – 700 013

2. Income Tax Officer, Ward-62(2), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches