

## आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफौर रहमान, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI S RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 5030/Mum/2019

(निर्धारण वर्ष / Assessment Year 2011-12)

Shri Paras Kothari C/o M/s Hiren Shah & Co. Chartered Accountants, 505- Express Chambers, Opp. Natra Studio, Near Wesern Express Highway and Metro Station, 72- Andheri Kurla Road, Andheri East, Mumbai-400 069	बनाम/ Vs.	The ITO, Ward- 27(2)(5) Room No. 421, 4 <sup>th</sup> Floor, Tower No.6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai-400 703
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAEPK4201D		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Shreekala Pardeshi, DR

सुनवाई की तारीख / Date of hearing:	17.03.2021
घोषणा की तारीख / Date of pronouncement:	17.03.2021

### **आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /

**PER MAHAVIR SINGH, VP:**

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-25, Mumbai, [in short CIT(A)], in ITA No. CIT(A)-25/IT-163/2017-18/44 dated 20.05.2019. The assessment was framed by the Income Tax Officer (in short ITO/ AO),

Central Circle-27(2)(5), Mumbai for the A.Y. 2011-12 vide order dated 29.11.2016 under section 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) in not condoning the delay despite the fact that there is sufficient cause for not filing the appeal within the time. For this assessee has raised the following ground No. 1:-

*"1. The learned Commissioner of Income Tax (Appeals)-25, Mumbai (CIT(A)) erred in law and in facts in dismissing the appeal filed by the appellant by holding that the appeal was not filed in time and accordingly barred by limitation. In this connection, the learned CIT(A) also erred in rejecting the plea for condonation of delay filed by the appellant by holding that there was no sufficient cause.*

*The appellant prays that the delay in filing the appeal before the CIT(A) may please be directed to be condoned."*

3. At the outset, it is noticed that the penalty order under section 271(1)(c) of the Act was passed by the Assessing Officer on 29.05.2017 and assessee in form No. 35 i.e. appeal form to be filed before CIT(A), the date of receipt of order is shown as 03.06.2017. Thereafter, the appeal was filed only on 09.01.2018 and thereby there is a delay of 190 days. The assessee has filed condonation petition before CIT(A) stating

the reasons which are mentioned by CIT(A) in Para 5.2. which reads as under:-

*"5.2 The assessee has claimed that the delay was occasioned due to the fact that the assessee had asked his accountant to forward the order to his tax consultants but the accountant forgot to do the same. This averment by the assessee is not supported by any document, evidence or affidavit."*

4. The CIT(A) has not accepted the condonation of the assessee and main reasoning given by CIT(A) in Para 5.4 for not condoning the delay reads as under: -

*"5.4 The submission of the assessee is considered. It is trite that the assessee is required to explain each day's default in view of the decision of the Supreme Court in the case of 'Office of the Chief Post Master General vs. Living Media India Ltd' CA No. 2474-2475 of 2012 and other decisions. The AR had no explanation for the fact that the assessee did not bother to ascertain whether an appeal is to be filed and whether the appeal was filed. It is also a fact that even during the period the assessee had not discontinued or suspended his business and the work of the assessee had continued unabated. There is no evidence that the advocate of the*

*assessee was unaware of the requirement of filing appeal due to any omission on the part of the accountant. The accountant also has not been produced to support the claim made by the assessee. Therefore, it is not possible to accept the bland submission of the assessee.”*

5. The CIT(A) has discussed various case laws and it is noticed that the CIT(A) after admitting the appeal also discussed the merits of the case and confirmed the action of the Assessing Officer in levying the penalty under section 271(1)(c) of the Act by dismissing the appeal of the assessee.

6. None is present from assessee's side. On the other hand, the learned Sr. DR Ms. Shreekala Pardeshi present from Revenue's side. When this point was pointed out to her that atleast one opportunity should be given to assessee to file the supporting documents, evidences or affidavits. The assessee should also allowed the opportunity to produce the accountant for examination before CIT(A). She has not contested the same.

7. After hearing the learned Sr. DR and going through the facts as noted above, we are of the view that atleast, assessee should given one opportunity to explain the delay either by producing the accountant or by producing any affidavit or any evidences as noted by the Commissioner of Income Tax (Appeals). Hence, we set aside the order of CIT(A) and remand the matter back to his file for fresh adjudication. Needles to say that the CIT(A) will first adjudicate the issue of



condonation and in case, he condones the delay, he will adjudicate the issue on merits.

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

Order pronounced in the open court on 17.03.2021

Sd/-

(एस रिफ़ौर रहमान / S RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 17.03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai