

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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 1435/MUM/2020 : A.Y : 2011-12

Pradip Kumar Gopal Prasad Jamuar
H 1/03, Lake View CHS, Sector 14,
Airoli, Navi Mumbai 400 708.

PAN : AADPJ5232A (Appellant)

Vs. Dy. Commissioner of Income
Tax, Circle – 15(1)(1), Mumbai.
(Respondent)

Appellant by : Shri Harsh Vardhan

Respondent by : Shri Vivek Perampurna

Date of Hearing : 28/10/2021

Date of Pronouncement : 05/11/2021

ORDER

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-24, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A)-24/DCIT-15(1)(1)/IT-252/2018-19 dated 31.10.2019. The assessment was framed by DCIT – 15(1)(1), Mumbai for Assessment Year 2011-12 vide his order dated 31.11.2018 under Section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, it is noticed that this appeal is time barred by 38 days and assessee has filed condonation petition stating the following reasons :-

"The undersigned appellant was suffering from Cancer in Kidney and Urine Bladder since 2004 when one of the Kidney was removed. I am also

suffering from Gangrenous Choleystitis with DM with ARF with Septic Shock. I have had to be admitted again Hospital from 7th January 2020 to 18th January 2020 and is still under medical treatment.

The appeal order from L'd. CIT(A) – 24, Mumbai was received by me on 29.11.2019 and the due date of filing of appeal before Hon'ble ITAT was 28th January 2020. So there is a delay of days in filing appeal before Hon'ble ITAT. The delay of in filing this appeal was unintentional and due to my serious & complicated medical condition. Moreover, I am a Senior Citizen, suffering with such incurable and life threatening disease.”

The assessee has enclosed all the evidenced along with this petition. When these facts were confronted to the learned Sr. DR, he agreed that the delay can be condoned. As the cause for delay in filing the appeal is reasonable, I condone the delay and admit the appeal.

3. The learned counsel for the assessee stated that the CIT(A) has dismissed the appeal as assessee in default for non-prosecution and no order is passed on merits. When these facts were confronted to the learned Sr. DR, he fairly conceded that the matter can be restored back to the file of the CIT(A) for re-adjudication.

4. After hearing the rival contentions and going through the facts and circumstances of the case, I noted that the CIT(A) has passed the order dismissing the appeal for non-prosecution and there is no decision on merits. The CIT(A), or for that purpose, any appellate authority, is duty bound to decide appeal on merits and the appeal cannot be dismissed for non-representation. Hence, I set aside the order of CIT(A) and remand the mater back to his file for afresh adjudication. Needless to say, the CIT(A) will allow reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 5th November, 2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 5th November, 2021

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS
I.T.A.T, Mumbai