

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

**[Coram: Pramod Kumar (Vice President),
and Sandeep S Karhail (Judicial Member)]**

ITA No. 6764/Mum/2019
Assessment year: 2015-16

Rohan Ashok Thakur

401, 4th floor, Opp. Papdi Talav, Near Hanuman Mandir,
Papdi, Vasai-401 201 [PAN:ACUPT7269A]

..... Appellant

Vs.

**Income Tax Officer-Ward 4(3)
Thane**

..... Respondent

Appearances by

None for the appellant

Sudha Ramchandran for the respondent

Date of concluding the hearing : April 18, 2022
Date of pronouncement the order : July 15, 2022

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the order dated 15.03.2019 passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2015-16, dismissing the appeal as non-maintainable on the ground that it is time barred.
2. None appeared for the assessee. We have heard the learned Departmental Representative perused the material on record and duly considered facts of the case in the light of the applicable in the legal position.
3. To adjudicate on this appeal it is sufficient to take note of the fact that the appeal filed before the learned CIT(A) was delayed by 3 months and 16 days and it was dismissed by the learned CIT(A), rejecting the condonation petition filed by the learned CIT(A). The learned CIT(A), in so rejecting the condonation petition had noticed certain inconsistencies in the medical certificate, further, noted that the condonation petition is not supported by an affidavit and observed *inter alia* that “for condoning delay in filing of the appeal it must be proved

beyond doubt that the assessee was diligent and not guilty of negligence whatsoever". The assessee is aggrieved, and in the appeal before us.

4. We have noted that, as stated by the assessee in affidavit before us, the then tax consultant appearing on behalf of the assessee before the learned CIT(A) had never advised the assessee about need to file affidavit in support of the condonation petition, and it is for this reason that the lapse took place. We have also noted that there has been change of tax consultant as the assessee was not satisfied with the way his case has been handled before the learned CIT(A). The assessee is an individual and has been stated to be unwell at the relevant point of time. It is also matter on record that the change of counsel did take place. In these circumstances, in our considered view the learned CIT(A) rather than taking a pedantic approach in the matter ought to have condoned the delay and proceeded to take up the matter on merits. As observed by the Hon'ble Supreme Court in the case of *Improvement Trust vs Ujagar Singh & Ors (Civil Appeal No. 2395 of 2008)* "unless malafides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned." In the present case, when the assessee is an ordinary non-corporate tax payer and the assessee was going through a bad patch of time on health front, a lenient view is generally required to be taken for serving the larger cause of justice. In view of these discussions and bearing in mind the entirety of the case, we deem it fit and proper to hold that the delay in filing appeal before the learned CIT(A) ought to have been condoned and the learned CIT(A) ought to have decided the matter on merits. We, therefore, remit the matter to the file of the learned CIT(A), in the light of the above, to decide the matter a fresh on merit after giving one more opportunity of hearing to the assessee, in accordance with the law and by of a speaking order. Ordered, accordingly.

5. In the result, the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 15th day of July 2022

Sd/-
Sandeep S Karhail
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 15th July, 2022

Copies to: (1) *The appellant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar/ Sr. PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai