

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

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 491/Mum/2022  
Assessment Year: 2013-14**

SaharshLaxmiratanDaga, 1505, A wing, Meghdoot, Back Road, Lokhandwala Complex, Andheri West, Mumbai. [PAN:AENPD9975L] <b>(Appellant)</b>	<b>Vs.</b>	ACIT, Range 17(1), [Formerly Circle 25(1)] 117, Kautilya Bhavan, BKC, Bandra East, Mumbai. <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Aditya Maheswari,</b>
<b>Respondent by</b>	<b>Sh. Tejinder Pal Singh, (Sr. DR.)</b>

<b>Date of Hearing</b>	<b>02.08.2022</b>
<b>Date of Pronouncement</b>	<b>12.10.2022</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal was filed by the assessee against the order of the Id. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi, [in brevity the CIT(A)] bearing appeal No. DIN & Order No. ITBA/NFAC/S/250/2021-22/1036142026(1), date of order 04.10.2021, the order

passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] for A.Y.2013-14. The impugned order was originated from the order passed by the Assistant Commissioner of Income Tax, Circle 25(1), Mumbai(in brevity the AO),order passed u/s 143(3)of the Act date of order 19.02.2016.

2. The assessee agitated the following grounds which are reproduced here as under:-

*“1. On the facts and circumstance of the case, the learned CIT (Appeals)-NFAC had rejected the appellant’s application for condonation of delay in filing of appeal as the appellant was not aware that appeal was to be filed compulsory through electronic filing though manual appeal was filed and later on electronic filing was done.*

*2. On the facts & circumstance of the case the learned assessing officer erred in making addition on account of rental income for Rs. 90,000/-. Actual amount received during the F. Y. 2012 - 13 by the applicant from tenant towards rent was offered for taxation.*

*3. On the facts & circumstance of the case the learned A. O. erred in disallowing of claim of interest u/s 57 of Rs. 829,760/-*

*4. The appellant reserves the right to add, amend or alter and vary, any of the ground of appeal on or before date of rearing or at the time of hearing.”*

2. The brief fact of the case is that after receiving the order U/s 143(3) of the Act on dated 19/02/2016 from the assessing authority, the assessee filed an appeal in physical mode, on dated 16.05.2016. After getting information from the authority the assessee filed the same appeal in electronic mode on dated 16.01.2019. The Id. CIT(A) had considered only the submission of appeal on electronic mode filed on dated 16.01.2019 and rejected the appeal on reason that the filing of appeal is in delay without considering the petition of assessee for condonation of delay. The assessee had explained the reason of delay during the appeal proceeding. The Id. CIT(A) rejected the plea of assessee & treated the prayer as not as “Sufficient Cause” for condoning the delay. During the assessment proceeding the addition was made on account of difference in rental income amount to Rs.90,000/- and disallowance of deduction claimed by the assessee u/s 57 of the Act on interest amount of Rs.8,29,760/- which is worked out total amount to Rs.9,19,760/-. Without considering the merit of the case, the Id. CIT(A) had rejected the appeal petition on technical ground & upheld the order of the assessing authority.

3. Being aggrieved assessee filed an appeal before us.

4. In the appeal order the appellate authority had inserted the following observation related to filing of the appeal in delay. The observation of the Id. CIT(A) is extracted from para 2.4 of the Id. CIT(A) order which is reproduced as under:-

*“2.4. During the course of appellate proceeding, the appellant has submitted written submission.*

*“To The Commissioner of Income tax Appeals Mumbai Sub : In Response to Notice of the AY 2013-14 Ref : DIN ITBA/NFAC/F/APLJ/2021- 22/1035324841(1) Appeal No. CIT (A), Mumbai-37/10332/2018-19 PAN No. AENPD9975L Dear Sir In response to above appeal I have submission of my reply on or before 17 September 2021, and I have raised ground of facts of appeal in my filed manually appeal on 16 May 2016 and filed electronically appeal dated 16 Jan 2019 via acknowledgment no.409335010160119 based on passed assessment order u/s 143(3) of the income tax act 1961 dated 19.02.2016 of the AY 2013-14. Subsequently your honour I have received notice u/s 148 via ref no. ITBA/AST/S/148/2021-22/1033700875(1) dated 25 June 2021 and in response to that I have filed my return via ack. no 185384360240721 dated 24 July 21. Therefore, I have pray that your honour shall accept the conceded income as my true and correct income of the AY 2013-14 of filed ITR u/s 148 of the income tax 1961 dated 25 June 2018. Therefore, above filed ground of appeal become infructuous or irrelevant and although I*

*have not received assessment order pertains my filed.; return u/s 148 of the income tax 1961. Your honour you may either kindly keep my appeal, or your honour decide you think fit in my case. Thanking You, Yours Truly SaharshDagaEnel: 1. Copy of U/s 148 ITR acknowledgement 2. Copy of Manually filed appeal.*

*3. On perusal of Form-35, it is seen that the order u/s 143(3) dated 19-02-2016 has been served on 19-02-2016. This appeal has been preferred against the order dated 19-02-2016 and the appeal was filed on 16-01-2019, which is beyond the statutory time limit provided for filing of the appeal. As per Section 249(2)(c) the appeal shall be presented within 30 days of the following date on which the intimation of the order sought to be appealed against is served.”*

5. The ld. Sr. DR vehemently argued and relied on the order of the revenue authorities. No such contrary fact was produced before the bench.

6. We heard the rival submission and consider the documents available in the record and observe the orders of the revenue authorities. The addition was made by the ld. AO on basis of difference in rental income received and declared in the return. The difference is Rs.90,000/- which was added back with the total income. The assessee claimed the deduction u/s 57 in respect of property u/s 57 amount to Rs.8,29,760/-. The said interest expenses were not allowable deduction as per the

ld. AO and added back with the total income of the assessee. The assessee filed the appeal physical mode on dated 16.05.2016 after receiving the order of assessment, u/s 143(3) of the Act on dated 19.02.2016. As per the assessee they were freshly intimated and filed the appeal in electronic mode on dated 16.01.2019. The fact was elaborately stated before the ld. CIT(A) during the appeal proceeding, which was inserted, in our order above. The reason of delay was explained by the assessee during the appeal proceeding. But the ld. CIT(A) had not accepted it as “sufficient cause” for condoning the delay. Without verifying fact of the case, the ld. CIT(A) rejected the appeal on the ground of delay for violation of section 249(2)(c) of the Act. The appeal was rejected on technical grounds. The merit was duly avoided by the ld. CIT(A) during passing of order. In our opinion the assessee was not negligent for filing the appeal against the order of the ld. AO. The mode of filing was manual, and the department has accepted the said appeal. After that the assessee filed this appeal electronically without losing any time. There is sufficient cause to explanation of delay. On the other hand, the assessee was not assessee in default for filing the appeal. There is sufficient reason with the appellate authority to condone the delay.

7. We are setting aside the order of the Id. CIT(A) and remand back the case before the Id. CIT(A) for further adjudication considering the facts and grounds of the case. Needless to say, that the Id. CIT(A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by Id. CIT(A), and adjudicated on merits in accordance with law. We order accordingly.

8. In the result, the appeal of the assessee in **ITA No. 491/Mum/2022** is allowed for statistical purposes.

**Order pronounced in the open court on 12.10.2022**

**Sd/-  
(Pramod Kumar)  
Vice President**

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order