

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

**BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT**

**ITA No. 35/Ahd/2022  
Assessment Year : 2016-17**

Shree Kesar Bricks, 599-1-2, Sada Ni Dhabi, Near Water Canel, Narol Vatva Road, Isanpur, Ahmedabad-382405 PAN : ACCFS 9520 P	Vs	The Income Tax Officer, Ward 3(2)(10), Ahmedabad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Rupesh R. Shah, AR
Revenue by :		Ms. M.M. Garg, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04/10/2022  
घोषणा की तारीख /Date of Pronouncement: 12/10/2022

**आदेश / ORDER**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["CIT(A)" in short] dated 23.12.2021 whereby he dismissed the appeal of the assessee *in limine* by treating the same as barred by limitation.

2. The assessee, in the present case, is a partnership firm which filed its return of income for the year under consideration on 27.08.2016. In the said return, income was declared by the assessee on presumptive basis under Section 44AD of the Income-tax Act, 1961 ("the Act" in short) and after claiming deduction on account of remuneration to partners and interest on partners' capital, a loss of Rs.545/- was declared. While processing the return of income filed by the assessee under Section 143(1) of the Act, the CPC Bangalore did not allow the claim of the assessee for deduction on account of remuneration to partners and interest on partners' capital. The assessee, therefore, moved an application on 15.02.2017 seeking rectification

of the mistake in not allowing the deduction on account of partners' remuneration and interest on partners' capital. The said application, however, was rejected by the CPC, Bangalore vide an order dated 17.03.2017 passed under Section 154 of the Act.

3. Against the order passed by the CPC, Bangalore under Section 154 of the Act, an appeal was filed by the assessee before the learned CIT(A). There was, however, a delay of 1199 days on the part of the assessee in filing the said appeal. In this regard, a petition was filed by the assessee before the learned CIT(A) seeking condonation of the said delay. The learned CIT(A), however, rejected the same for the following reasons given in paragraph Nos. 6 and 6.1 of his impugned order:-

*"6. I have carefully perused the reasons stated by him in support of his request filed for condonation of delay. However, I am of the view that the reasons stated by the appellant do not form a reasonable and sufficient cause for delay of 1199 days. The appellant while stating reasons for such delay has put forth the reason that it was not known of the fact that the communication was sent in mail and partners not using regular email.*

*6.1 However, the appellant's averment for delay in filing the appeal is not acceptable as it has made a pre-requisite of filing income tax return but it failed to keep track of the communication or check the email. This request/reason in form 35 for condonation of delay itself shows that the appellant was aware of the fact that there is a certain prescribed time limit for filing appeal but even after knowing the same it did not make sufficient efforts to get the appeal filed in time and possibly tried to present it in the manner that would be favourable to it. It is an admissible fact that the first appellate stage is available to the appellant as a right to challenge the base orders passed by the various adjudicating authorities, however it is equally undeniable that the appellant should follow the prescribed time limit in availing such right available to him, otherwise, every assessee could have filed appeal beyond the prescribed time limit and file an application for condonation of delay therewith which is surely not the intention of the legislature. It is only the genuine cases where the appellant has been prevented by a sufficient and reasonable cause to file appeal within time that the condonation could be provided. The reason given by the appellant shows that there was lack of*

*want on the part of the appellant to file the said appeal in time though it has sufficient knowledge about the legal proceedings and now when the delay of three years have crept in the filing of impugned appeal, the appellant instead of furnishing any valid reason is just making excuses to allow and condone the delay in filing of appeal. It is a well settled law that rigour of limitation must apply where the statute so provides. Limitation cannot be condoned on the ground of compassion or equitable considerations or where the party seeking condonation appears to be callous or negligent. As evident from the submissions made by the appellant, this appears to be a case of gross negligence, inaction and laches. The appellant filed appeal only after hearing about some favourable orders passed in its favour. The appellant has not acted with reasonable diligence, and therefore, in my considered opinion, granting of condonation in these cases is not warranted."*

4. For the reasons given above and relying on certain judicial pronouncements as referred to and discussed in his impugned order, the learned CIT(A) treated the appeal filed by the assessee as barred by limitation and dismissed the same *in limine*.

5. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

6. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned Counsel for the assessee has submitted that the reasons for delay in filing the appeal before the learned CIT(A) were not completely given in the petition filed for condonation of the said delay. He has submitted that the assessee, therefore, prepared an affidavit giving full details and complete reasons and got the same notarized on 23.12.2021 before filing the same before the learned CIT(A). He has submitted that the learned CIT(A), however, passed the impugned order declining to condone the delay and dismissing the appeal of the assessee *in limine*. He has submitted that the assessee, therefore, did not get proper and sufficient opportunity of putting forth his

case in support of the petition filed for condonation of delay and urged that one more opportunity may be given to the assessee to do so by sending the matter back to the learned CIT(A). Keeping in view all the facts of the case, I am inclined to accede to this request of the learned Counsel for the assessee and since the learned DR has also not raised any objection in this regard, I set aside the impugned order passed by the learned CIT(A) dismissing the appeal of the assessee *in limine* by treating the same as barred by limitation and remit the matter back to him for disposing of the appeal of the assessee afresh after giving proper and sufficient opportunity of being heard to the assessee to support and substantiate his petition for condonation of delay in filing the appeal.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 12<sup>th</sup> October, 2022 at Ahmedabad.

Sd/-

**(P.M. JAGTAP)**  
**VICE-PRESIDENT**

Ahmedabad, Dated 12/10/2022

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad