

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, NAGPUR  
VIRTUAL HEARING HELD AT ITAT PUNE BENCHES, PUNE**

**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM**

**ITA No. 109/NAG/2020 : A.Y. 2009-10**

M/s. Lakhi Packaging Pvt. Ltd., C/o. Annapurna Traders,  
Kirana Oil, Itwari, Nagpur  
PAN: AABCL 08730 C :Appellant

Vs.

The Asstt. CIT, Central Circle 12) Nagpur Respondent

Appellant by : Shri Saket Bhattad (through virtual)  
Respondent by : Shri G.J. Ninawe (through virtual)  
Date of Hearing : 27-10-2022  
Date of Pronouncement : 28-10-2022

**ORDER**

This appeal preferred by the assessee emanates from the order of the Id. CIT(A)-3, Nagpur dated 24-01-2018 for assessment year 2009-10 as per the grounds of appeal on record.

2. That on the date of hearing, the assessee had asked for adjournment through adjournment petition filed before me. This adjournment petition is rejected and the case is heard on merits.

3. At the outset, it is found that the appeal is time-barred by 934 days. In this regard, the assessee has filed an affidavit and condonation petition. Substantiating the contents of the affidavit for condoning the delay, the Id. A.R for the assessee appearing virtually submitted that one of the Directors of the assessee-company is the deponent in the affidavit and that the said director's father had expired during the relevant time, who was looking after the Income-tax matters of the assessee-company. Due to this reason there occurred a delay of 934 days. I find that the reasons are absolutely "Vis-Major" or 'an act of God' and beyond human control.

There is no deliberate or malafide intention of the assessee in causing the delay. The Id. D.R did not raise any objection for condonation of delay. The delay is therefore, condoned and the appeal is heard on merits.

4. Referring to the grounds of appeal, specifically ground No. (1), the Id. A.R submitted that the Id. CIT(A) has passed an ex parte order dismissing the appeal only on the premise of non-appearance by the assessee without adjudicating on merits. The Id. A.R submitted that due to the demise of the father of the director who had deposed in the affidavit before the Bench, for this same reasons there was non-appearance before the first appellate authority.

5. I have perused the Id. CIT(A)'s order and the relevant materials on record. I have also heard the submissions of the parties. The Id. CIT(A) has passed an ex-parte order where the rights and liabilities of the parties have not been adjudicated substantially on merits. The Id. CIT(A) has dismissed the appeal of the assessee on the ground of non-attendance by the assessee without adjudicating on merits. The assessee has filed an affidavit before me and also stated that due to unfortunate death of the person who was looking after the Income-tax matters they could not represent their case before the Id. CIT(A). It is also true that due to non-attendance by the assessee and due to non-filing of any written submissions by the assessee the Id. CIT(A) did not had opportunity to examine the merits of the case. Before me, the Id. A.R for the assessee has prayed for one more opportunity to represent their case before the Id. CIT(A) so that proper adjudication is done on merits before him. The Id. D.R raised no objection if the matter is restored to the file of the Id. CIT(A).

6. I have heard the parties herein. In the interest of justice, I set aside the order of the Id. CIT(A) and remand the matter back to his file for re-adjudication as per law considering the merits of the case and at the same time I also direct the assessee to

furnish all relevant details/documents before the Id. CIT(A) and represent their case on merits.

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

Order pronounced in the open court on 28<sup>th</sup> October, 2022.

Sd/-

**PARTHA SARATHI CHAUDHURY  
JUDICIAL MEMBER**

Pune; Dated : 28<sup>th</sup> October, 2022  
Ankam

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Appeals)-3, Nagpur
4. The Pr.CIT. Nagpur
5. DR, ITAT, "SMC" Bench, Nagpur
6. Guard File.

BY ORDER,

Sr. Private Secretary  
ITAT, Pune

/// TRUE COPY ///

		Date	
1	Draft dictated on	27-10-2022	Sr.PS
2	Draft placed before author	28-10-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	28-10-2022	Sr.PS/PS
7	Date of uploading of order	28-10-2022	Sr.PS/PS
8	File sent to Bench Clerk	<a href="#">28-10-2022</a>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		