

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2143/मुं/2021 (नि.व 2011-12)
ITA NO.2143/MUM/2021(A.Y 2011-12)

Meher Ghansham Lalwani,
Shop No.5, Sheetal Apts,
Lokhandwala Complex,
Andheri(West), Mumbai -400 053.

PAN: AFYPR-7135-J

..... अपीलार्थी /Appellant

बनाम Vs.

The Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre,
Delhi.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri B.V. Jhaveri

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 04/08/2022

घोषणा की तिथि/ Date of pronouncement : 01/11/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 01/09/2021 for the Assessment Year 2011-12.

2. The Registry has issued defect memo according to which, this appeal is time barred by 26 days. The assessee has filed an application explaining the alleged delay in filing of the appeal. A perusal of the application shows that the assessee had filed appeal online on ITAT Portal on 29/10/2021 i.e. within the prescribed period of limitation. The assessee was issued

acknowledgement with an instruction to furnish physical copy of the appeal within 30 days. Thereafter, the assessee filed physical copy of the appeal on 28/11/2021 i.e. within 30 days from the date of filing of the appeal online. After examining the facts we are satisfied that there is no delay in filing of the appeal.

3. Shri B.V. Jhaveri appearing on behalf of the assessee submitted at the outset that before CIT(A) the assessee could not furnish reply/submissions as the Portal of the Department was not functioning. The Id. Authorized Representative for the assessee fairly admitted that the assessee received notice of hearing of appeal on four occasions spread over a period of eight months starting from December, 2020 to August, 2021. Initially there was no problem with the official website of Income Tax Department, however, the assessee could not furnish reply. The software glitches started from 01/06/2021 onwards, therefore, the assessee could not file any response to the notices. The Id. Authorized Representative for the assessee submitted that the appeal of the assessee has been dismissed by the First Appellate Authority for non-prosecution. The Id. Authorized Representative for the assessee prayed that if an opportunity is granted, the assessee would furnish necessary documents/evidences in support of his contentions. The assessee has prima-facie good case in his favour.

4. Per contra, Ms. Beena Santosh representing the Department vehemently defended the impugned order and prayed for dismissing the appeal. The Id. Departmental Representative submits that sufficient opportunity was granted to the assessee however, the assessee failed to respond to the notices issued by the First Appellate authority.

5. Both sides heard. Admittedly the notices were sent to the assessee by CIT(A) on four occasions and the assessee failed to respond to the said notices. The contention of the assessee is that due to glitches in software the assessee could not furnish reply to the notices issued after 01/06/2021. Without going into the veracity of the reasons for non-filing of the submissions/ response to the notices before the CIT(A), we deem it appropriate to restore this appeal back to the file of CIT(A) for adjudication on merits.

6. The assessee on receipt of the notice from CIT(A) shall positively respond to the said notice and furnish his reply along with supporting documents, if any. The CIT(A) shall decide the appeal of assessee denovo after affording reasonable opportunity of hearing/opportunity to make submissions, in accordance with law.

7. In the result, the impugned order is set aside and appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on Tuesday the 1st day of November, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 01/11/2022
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai