

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

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3058/M/2022  
Assessment Year: 2014-15**

Shri Subhash N Jain, 722, Bldg. No.2, Akshay Girikunj, Paliram Road, Near BMC, Andheri (W), Mumbai - 400058 <b>PAN: AAEPJ3069L</b>	Vs.	Income Tax Officer, Ward-25(1)-3, 4 <sup>th</sup> Floor, Building C, 10, Room No.404, Pratyakash Kar Bhavan, Bandra Kurla Complex, Mumbai – 25(1)(1)
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Joseph Pulikkoden &  
Shri Steve Pulikkoden, A.R.

Revenue by : Shri A.N. Bhalekar, D.R.

Date of Hearing : 25 . 01 . 2023

Date of Pronouncement : 23 . 02 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the appellant, Shri Subhash N Jain (hereinafter referred to as 'the assessee') that this appeal filed by the assessee is time barred by about 20 days and moved an application for condonation of delay supported with an affidavit. The assessee sought to condone the delay in filing the appeal on the grounds

inter-alia that the impugned order passed by the Ld. CIT(A) dated 15.09.2022 has never been received by the assessee as the same has been sent by the Income Tax Department to an unknown e-mail ID, i.e. [patni13@yahoo.com](mailto:patni13@yahoo.com) whereas the assessee had registered his e-mail ID on the Income Tax Portal as [subashjain19@gmail.com](mailto:subashjain19@gmail.com) and [hanibom5@hotmail.com](mailto:hanibom5@hotmail.com); that the assessee came to know about the order subsequently when he has accessed the Income Tax Portal; that the delay in filing the appeal is neither intentional nor malafide and prayed for condonation of the delay.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the fact that due to newly introduced National Faceless Appeal Centre (NFAC) such inadvertent mistake in transmitting the impugned order might have occurred. In view of the law laid down by the Hon'ble Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) wherein it is held that "it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non deliberate delay," the delay of 20 days in filing the present appeal is hereby condoned and present appeal is ordered to be registered and heard on merits.

4. The assessee by filing the present appeal, sought to set aside the impugned order dated 15.09.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2014-15 on the grounds inter-alia that :-

*“Shri. Subhash N. Jain ("the Appellant") prefers an appeal against the order of the Ld. Commissioner of Income Tax (Appeals) in DIN & Order No. ITBA/NFAC/S/250/2022-23/1045503381(1) dated 15.09.2022 (the Impugned Order)", made through the National Faceless Appeal Centre ("NFAC") on the following grounds:*

*1) In the facts and circumstances of the case and in law, Ld. CIT - (A) has erred in dismissing the appeal of the appellant, stating non-compliance on part of the Appellant in spite of the fact that the notices for hearing/ submissions under the new procedure of faceless regime were unavailable on the registered email id of the appellant.*

*2) in the facts and circumstances of the case and in law, the Ld. CIT - (A) has erred in dismissing the appeal without considering the material on record, mentioned in the grounds of appeal and statement of facts submitted by the Appellant, along with the appeal in Form 35, under Rule 45 of the Income Tax Rules 1962, while seeking relief on the additions of Rs. 29,50,000/- made u/s 56(2)(vii)(b)(ii) of the Income tax Act 1961 in the Assessment Order.*

*3) In the facts and circumstances of the case and in law, the Ld. CIT - (A) failed to appreciate the explanations and submissions dated 27.04.2018 made by the Appellant during physical appeal proceedings before the Ld. CIT(A)-37, Mumbai.*

*4) In the facts and circumstances of the case and in law, Ld. CIT - (A) failed to appreciate the fact that the addition of Rs. 29,50,000/- made u/s 56(2)(vii)(b)(ii) of the Income tax Act 1961, being the difference in sale consideration and Stamp duty valuation was made in the assessment order, during the pendency of the report from the Departmental Valuation Officer to whom, the matter was referred to valuation.*

*5) In the facts and circumstances of the case and in law, the Ld. CIT - (A) failed to seek the Report of the Valuation Cell, Income tax Department, Solapur, from the Assessing Officer, to understand the correctness of the same, although the assessment order had expressly stated that the report of the valuation officer had not been received as on the date of the passing of the assessment order. i.e., 28.12.2016.*

*6) The Appellant craves to reserve the right to add, alter, or amend any ground or grounds of appeal on or before the hearing.”*

5. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the assessee is an individual tax payer being a professional architect. Assessee's return of income declaring total income of Rs.4,53,370/- after claiming deduction under section VIA of Rs.1,18,281/- was subjected to scrutiny by way of issuance of notice under section 143(2) and 142(1) of the Income Tax Act, 1961 (for short 'the Act') to which assessee filed details and also made submissions. During the assessment proceedings the Assessing Officer (AO) noticed that the assessee has purchased a land/plot jointly along with Nutan Pravin Karnavat on 19.12.2013 for a consideration of Rs.58,00,000/-, the market value of which was Rs.1,17,00,000/-. Declining the contentions raised by the assessee the AO proceeded to make addition of Rs.29,00,000/- under section 56(2)(vii)(b)(ii) and thereby framed the assessment under section 143(3) of the Act.

6. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal for want of non prosecution by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

8. Ld. CIT(A) disposed of the appeal filed by the assessee by returning following findings:

*“The appellant was sent notices of hearing/submission on 06/01/2021, 29/08/2022 & 07/09/2022. There was no reply from the appellant at given address. Therefore, it seems appellant has no interest in pursuing the appeal. Hence, I do not find any reason to interfere with the order passed by the assessing officer. In sum, appeal is dismissed.”*

9. Bare perusal of the impugned order passed by the Ld. CIT(A) shows that three notices dated 06/01/2021, 29/08/2022 & 07/09/2022 were stated to have been issued to the assessee but no reply was there from the assessee and hence the Ld. CIT(A) proceeded to dismiss the appeal for non prosecution.

10. We are of the considered view that first of all it is not brought on record by the Ld. CIT(A) if the assessee was ever served with the notices stated to have been issued to him and secondly if for argument sake it is assumed that notices were served to the assessee then the Ld. CIT(A) was required to dispose of the present appeal on merits. The impugned order has been passed by the Ld. CIT(A) without applying his mind but merely for non prosecution of the assessee. The Ld. A.R. for the assessee stated that the assessee has never received the notices. In these circumstances, we are of the considered view that adequate opportunity of being heard has not been given to the assessee which is a sine qua non for imparting justice.

11. Resultantly, the impugned order passed by the Ld. CIT(A) is hereby set aside and file is remitted back to the Ld. CIT(A) to decide afresh after providing adequate opportunity of being heard to the assessee. Hence, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 23.02.2023.**

**Sd/-  
(BASKARAN BR)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 23.02.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.