

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri George George K., Judicial Member
and**

Ms. Padmavathy S., Accountant Member

ITA No. 875/Coch/2022 (Assessment Year: 2009-10)		
M/s. Ben Rubbers Cheenikuzhi North Mazhuvannur Ernakulam Dist. 686689 PAN – AAGFB6859G (Appellant)	vs	The Income Tax Officer Ward - 1 R.S. Road, Aluva 683101 (Respondent)

Assessee by:	Shri Pratheesh Paul M., CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of hearing:	01.03.2023
Date of pronouncement:	03.03.2023

ORDER

Per: George George K., J.M.

This appeal at the instance of the assessee is directed against the order of the CIT(A)/NFAC, Delhi dated 17.06.2022 passed under Section 250 of the Income Tax Act, 1961 (the Act). The relevant assessment year is 2009-10.

2. There is a delay of 9 days in filing this appeal. The assessee has filed a petition for condonation of delay. On perusal of the petition for condonation we find that the delay cannot be attributed to any laches on the part of the assessee and there is sufficient cause to condone the delay. Therefore, we condone the delay and proceed to dispose off this appeal on merits.

3. The brief facts of the case as follows: -

The assessee is a firm. For AY 2009-10 return of income was filed on 30.09.2009 declaring total income of Rs. 2,56,080/-. The assessment was selected for scrutiny and notice under Section 143(2) of the Act was issued on 01.09.2010. Assessment was completed under Section 143(3) of the Act vide order dated 23.12.2011 by assessing the total income at Rs.16,91,529/-.

4. Aggrieved by the assessment order the assessee filed appeal before the first appellate authority. The CIT(A) issued notices on 12.12.2019, 09.01.2021, 27.04.2021, 25.05.2022 and 03.06.2022 directing the assessee to furnish written submissions. Since no written submission was filed by the assessee in the appellate proceedings, the CIT(A) dismissed the appeal ex-parte without specifically adjudicating the issues raised in the grounds of appeal before him.

5. Aggrieved by the order of the CIT(A) the assessee has filed the present appeal before the Tribunal. The learned A.R. submitted that the assessee is not computer literate and missed the mails sent by the CIT(A) for filing written submission. It was stated that only the notice issued on 12.12.2019 alone was received by the assessee by post and the assessee has sought for adjournment of the same on valid reason. After the said date no further posting notices were received by the assessee by post. Therefore, in the interest of justice and equity, the learned A.R. submitted, the matter may be restored to the CIT(A) for considering the issue on merits.

6. The learned D.R. supported the orders of the AO and the CIT(A).

7. We have heard the rival contentions and perused the material on record. The CIT(A) had issued notices on five occasions directing the assessee to furnish written submission. It is claimed by the assessee that only first notice was received by post and the other four notices were never received by post. It is also claimed that the assessee is not computer literate

and if any notice was sent by email, he would have missed same. We are of the view that in the interest of justice and equity one more opportunity should be granted to the assessee. Accordingly the matter is restored to the file of the CIT(A). The assessee is directed to cooperate with Revenue and shall furnish the necessary material in support of his case. The assessee shall not seek adjournment of the case without valid reasons. With these directions the above case is disposed off.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 3rd March, 2023.

Sd/-
(Padmavathy S.)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Cochin, Dated: 3rd March, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Cochin*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.