

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 400/Del/2021  
Assessment Year: 2010-11**

Soumya Tradecom Pvt.  
Ltd., Gali No. 5A, Qila  
Road, Firdaus Nagar. Koil  
PS, Civil Lines, Aligarh.

**PAN: AALCS1040G**

(Appellant)

Versus ACIT(OSD) Ward 24(1)  
New Delhi.

(Respondent)

Assessee by: Sh. Sunil Gupta, Ld. CA  
Revenue by: Sh. Girish Kumar Kohli, Ld. Sr.  
DR

Date of hearing : 17/03/2023

Date of order : 29/03/2023

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Appellant/Assessee against the order dated 22.02.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-8, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2010-11.

2. At the outset, we observe that there is delay of 717 days in filing of the instant appeal for which the Assessee has claimed as under :

“3. *That the main reason of delay in filing the appeal was:*

- *All our taxation matters were being looked after by CA. Sh.Mithlesh Kumar Aggarwal, Senior Partner of M/s. M.K.Aggarwal & Co., Chartered Accountants, 30, Nisha.nt Kunj, Pitampura, Delhi - 110034.*
- *Sh. Mithlesh Kumar Aggarwal was not keeping well since November, 2018 and could not appear before the CIT(A) and sought adjournments through his article clerk and the CIT(A) dismissed the Appeal.*
- *CA Sh. Mithlesh Kumar Aggarwal expired on 23.11.2020. Copy of his Death Certificate is enclosed.*
- *We were not aware of the dismissal of appeal by the CIT(A) and when we came to know about the dismissal, the COVID -19 Pandemic had started.*
- *The appeal was filed immediately after the COVID -19 restrictions were lifted and the appeal was filed on 09.04.2021.*
-

*4. That in the facts and circumstances of the case it is submitted that we were totally dependent on our Counsel CA Sh. Mithlesh Kumar Aggarwal, who was looking after the taxation matters of the company and were under a bonafide belief that he had made all the compliances in time.*

*5. That an Affidavit confirming the said facts is enclosed.*

*6. That in the facts and circumstances of the case we request this Hon'ble ITAT condone the delay in filing the appeal and further request to regularize the appeal.”*

**3.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and the reasons given by the Assessee for condonation of delay in filing the instant appeal. The Assessee claimed that Shri Mithlesssh Kumar Aggarwal who was looking after the case of the Assessee was not keeping well since November, 2018 and therefore, could not appear before the Id. CIT(A) and sought adjournments through his article clerk. However, the Id. commissioner dismissed the appeal of the Assessee on 22.02.2019. The Assessee further claimed that its counsel ultimately expired on 23.11.2020. However, the Assessee was not aware about the dismissal of the appeal by the Id. Commissioner and

once came to know about the dismissal, Covid-19 pandemic had started. However, after the Covid-19 restrictions were lifted, the appeal was filed immediately on 09.04.2021. As the Assessee was dependent upon its counsel Shri Mithlesh Kumar Aggarwal, who was looking after the tax matters of the Assessee company, the Assessee was under the bonafide belief that Shri Aggarwal had made all the compliances in time. The Assessee at the last prayed that the condonation application filed by the Assessee may be allowed by condoning the delay by putting any condition including imposing reasonable cost.

**4.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that inspite of sending various notices to the Assessee through postal services as well as e-mail services, the Assessee neither appeared nor filed any reply in the assessment proceedings, therefore, in the constrained circumstances, the assessment order was passed u/s. 147/144 of the Act by the Assessing Officer.

In the first appeal proceedings, though the Id. Commissioner gave four opportunities by issuing the notices dated 30.11.2018, 27.12.2018 and adjourning

the case on two occasions and by fixing the case for hearings on 24.12.2018, 10.01.2019, 04.02.2019 and 19.02.2019, however, the Assessee neither made any compliance nor filed any submissions. Therefore, in the constrained circumstances, the Id. Commissioner finding no way, decided the appeal as ex parte, but on merits. We further observe that the first appeal before the Id. Commissioner was filed on 15.01.2018 and the Id. Commissioner decided the same on 22.02.2019 and as alleged, the Id. counsel Mr. Aggarwal expired on 23.11.2020.

More or less the Assessee attributed the negligence on the part of its counsel. As the present Id. counsel by filing the previous application dated 20.02.2023 claimed that the delay in filing the appeal was due to non filing of appeal timely, by the earlier counsel. We cannot encourage the allegations made against the counsel specifically, when he is no more in this world. In our considered view, as the Assessee did not act reasonably and remained negligent qua its legal proceedings pending before the Id. Commissioner, hence, the delay in filing the instant appeal is not substantiated with sufficient cause. however, considering the peculiar facts and circumstances of the case, as in the delay period, pandemic period is also involved and the orders passed

by the authorities below are also ex-parte and the Assessee has failed to file the relevant documents/submissions in support of its claim before the authorities below and the assessment year involved is 2010-11 and therefore, more than 14 years have already elapsed, we deem it appropriate for the just decision and proper adjudication of the appeal, to condone the delay of 717 days in filing of the instant appeal, but subject to deposit of Rs.25000/- in the National Relief Fund, within 15 days of the receipt of this order.

**5.** Coming to the merits of the case, as we have already observed that the Assessee before the authorities below failed to substantiate its case by filing the relevant documents and/or submissions and both the authorities below passed the orders as ex-parte in the constrained circumstances. Therefore, considering the peculiar facts and circumstances, we are inclined to remand the instant case to the file of the Id. Assessing Officer for decision afresh, suffice to say, by affording reasonable opportunity of being heard to the Assessee. We also direct the Assessee to appear and to file the relevant documents as and when would be required by the Assessing Officer. In case of further default, the Assessee shall not be entitled for any leniency.

**6.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 29/03/2023.

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**Sd/-  
(N.K. CHOUDHRY)  
JUDICIAL MEMBER**

\*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant  
Registrar  
ITAT New  
Delhi

Draft dictated	21.03.2023
Draft placed before author	22.03.2023
Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
Date of uploading on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	