

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT AND SHRI  
SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No.2478/Del/2022**  
Assessment Year: 2013-14

Indira Sastry, No.58/Y, 5 <sup>th</sup> Main, 4 <sup>th</sup> Phase, 7 <sup>th</sup> Block, BSK 3 <sup>rd</sup> Stage, Bangalore, Bangaluru, Karnataka-560085	<b>Vs.</b>	ACIT, Circle Int Tax-1(1)(1), New Delhi
<b>PAN :EHBPS3633F</b>		
<b>(Applicant)</b>		<b>(Respondent)</b>

Appellant by	Shri Suresh Muthukrishna, CA
Department by	Shri S.N. Pandey, Sr. DR

Date of hearing	03.04.2023
Date of pronouncement	11.04.2023

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

This is an appeal by the assessee against order dated 10.08.2022 of learned Commissioner of Income-Tax (Appeals)-42 New Delhi pertaining to assessment year 2013-14.

2. We have heard Shri Suresh Muthukrishna, learned counsel appearing for the assessee and Shri S.N. Pandey, learned Senior Departmental Representative.

3. The sole grievance of the assessee is against dismissal of assessee's appeal in limine by learned Commissioner (Appeals), on the ground of delay.

4. On perusal of facts on record, it is observed, the assessee filed the appeal before learned Commissioner (Appeals) with a delay of 18 days. However, inadvertently, in Form No.35 filed electronically, assessee did not mention that there is delay in filing the appeal. Nevertheless, the assessee uploaded a petition along with Form 35, seeking condonation of delay. This fact has been clearly admitted by learned Commissioner (Appeals). In fact, the contents of the petition seeking condonation of delay has been reproduced in the order of learned Commissioner (Appeals). Only for the reason that the assessee has failed to mention about the delay in Form No. 35, learned Commissioner (Appeals) has dismissed the appeal in limine without condoning the delay, by alleging that the assessee is neither careful nor diligent. This, in our view, is, unacceptable.

5. When the assessee has separately filed an application seeking condonation of delay and furnished sufficient reason for not being able to file the appeal in time, learned Commissioner (Appeals) should have examined assessee's claim on its own merits instead of raising technical issue that assessee did not mention the fact of delay in Form No. 35. It is trite law, endeavor has to be made for deciding the issue on merits and not to shut down the door of justice on a litigant for technical reasons. Thus, on overall consideration of facts and material on record, we are of the view that the assessee had sufficient reason for not filing the appeal in time. Accordingly, we set aside the impugned order of learned Commissioner (Appeals) and restore the matter back to his file with a direction to decide assessee's appeal on merits after providing due opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. In the result, the appeal is allowed for statistical purposes.

***Order pronounced in the open court on 11<sup>th</sup> April, 2023.***

***Sd/-***  
**( G.S. PANNU )**  
**PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 11<sup>th</sup> April, 2023.  
Mohan Lal

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi