

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM**

आयकर अपील सं/ I.T.A. No.337/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2014-15)

E-Arogya Healthcare Services Pvt. Ltd. 701, Hawaii Building, G. L. Compound, Next to Hiranandani, Hospital, Powai Mumbai-400076.	<b>बनाम/</b> Vs.	ITO, Ward-15(1)(1) Aayakar Bhavan, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCE3843K</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ashok Mehta
Revenue by:	Ms. Richa Gulati (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 13/04/2023

घोषणा की तारीख /Date of Pronouncement: 26/04/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 28.11.2022 for AY. 2014-15.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in not condonation the delay of twenty eight (28) days, though, according to the assessee, it had filed the condonation of delay explaining the cause for delay.

3. Brief facts are that AO passed scrutiny assessment for AY. 2014-15 u/s 144/147 of the Income Tax Act, 1961 (hereinafter “the Act”) dated 23.11.2017 determining total income of Rs.54,56,959/-. And thereafter, AO initiated penalty proceeding u/s 271(1)(c) of the Act and imposed penalty of Rs.1,66,534/- u/s 271(1)(c) of the Act vide order dated 20.05.2018. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC against the penalty levied which was dismissed by the Ld. CIT(A) taking note that the assessee filed the



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appeal belatedly before him only on 1.08.2018 whereas it had received the same on 03.06.2018. According to the Ld. CIT(A), the reasons cited by the assessee for delay in filling the appeal was not reasonable. Therefore, he was pleased to dismiss the appeal as not maintainable and denied condonation of delay. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the records. It has been brought to our notice that the assessee company (M/s. E. Arogya Healthcare Services Pvt. Ltd.) was formed to organize to Medical Camps for spreading information/awareness regarding human health by conducting Health Talks, Medical Awareness (lifestyle diseases like BP, diabetes, etc) along with insurance companies/TPA's. According to the assessee, the business failed to run as expected, which resulted in assessee incurring huge losses; and which prompted directors to take up jobs elsewhere to repay the cost/expenditure/investment incurred by them. Since assessee suffered heavy losses, office was closed and no staff attended the office. So, the assessee was not aware of the penalty/assessment proceedings, since there was no one to receive notice. And it was pointed out that assessee was not even aware of the scrutiny assessment proceedings initiated against it which ultimately resulted in passing of *best judgment assessment* against it; and thus it can be seen that assessee didn't receive the penalty notices/order; and that they came to know about it only on 30.06.2018 which was after thirty (30) days of passing of penalty order. And after having received it, they promptly had filed the appeal on 01.08.2018, which means altogether there was delay of



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less than thirty (30) days (28 days). Having taken note of the aforesaid facts, we further note that the assessee has also filed appeal against the quantum assessment passed u/s 144/147 of the Act wherein also best judgment assessment has been passed against the assessee due to non-receipt of notices/non-participation of assessee before the AO; and that quantum appeal is still awaiting adjudication. Therefore, we are inclined to condone the delay of twenty eight (28) days and in the interest of justice and fair play, we set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A), with a direction to decide the penalty appeal preferred by the assessee against the penalty levied u/s 271(1)(c) of the Act in accordance to Section 250(6) of the Act, and preferably after the order passed in the quantum assessment in accordance to law. The assessee is at liberty to file written submission and other documents in support of its claim and assessee may be heard before Ld CIT(A) pass the order.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 26/04/2023.

Sd/-

**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Sd/-

**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated :26/04/2023.  
*Vijay Pal Singh, (Sr. PS)*



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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai