

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 104/Del/2023
(Assessment Year: 2012-13)

Sekh Alauddin, 222/5, Jacobpura, Gurgaon, Haryana (Appellant) PAN: APWPA1035L	Vs. ITO, Ward-4(2), Gurgaon (Respondent)
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Assessee by :	Sh. Mukul Gupta, CA
Revenue by:	Sh. Om Parkash, Sr. DR
Date of Hearing	06/04/2023
Date of pronouncement	09/05/2023

ORDER

PER C. M. GARG, J. M.:

1. This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 02.08.2022 for AY 2012-13.
2. The application of assessee seeking condonation of delay of 107 days.
3. The assessee's representative (AR) submitted that the assessee is engaged in the business of polish and repair of old jewellery and allied products and was not aware of the consequences and time line for filing of appeal before the Tribunal. The Id AR submitted that the since the assessee was not aware of the time line for filing appeal before the Tribunal there was inadvertent delay of 107 days in filing the present appeal before the tribunal. Drawing our attention towards condonation petition the Id AR submitted that the assessee should not be punished for his ignorance about the time

line provide in statute for filing appeal before the Tribunal therefore, delay being bonfide may kindly be condone.

4. Replying to the above, the Id Sr. DR strongly opposed to the condonation of delay.

5. On careful consideration of the submission of the assessee I am of the view that the assessee is a small professional doing business of polish and repair of old jewellery and other allied products and for this purpose he moved from one locality to another locality and from one village to another village continuously. In such a situation the delay of 107 days in filing appeal before the tribunal cannot be taken as mala fide or not intentional on the part of the assessee, who is not getting anything from delay in filing appeal before the Tribunal. Therefore, I hold that the cause shown by the assessee in non filing appeal before the tribunal within specified time frame, is sufficient cause. Respectfully following the judgment of Hon'ble Supreme Court in the case of Concord India Insurance Co. Ltd Vs. Nirmala Devi reported in 118 ITR 507 (SC), the delay of 107 days in filing the appeal before the Tribunal is condone.

6. The Id Sr. DR, in all fairness agreed to the submission of the Id AR that the AO has passed order u/s 144 read with section 147 of the Act on 26.01.2019 and the case of the assessee was not represented properly before him. The Id Sr. DR also agreed to the second contention of the Id AR that the Id CIT(A) has also passed ex parte order without adjudicating the grounds of assessee raised in From 35 and decided the appeal against the assessee.

7. From careful reading of the first appellate order I find that the Id CIT(A) after reproducing the factual position of the case reiterated the findings of the AO and dismissed the appeal of the assessee without any adjudication of grounds of assessee as per from No. 35 of the first appellate appeal. In such a situation I find it just and proper to restore the matter to the file of the AO for a fresh de novo

framing of assessment after allowing due opportunity of hearing to the assessee without being influenced from earlier assessment order and first appellate order.

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

9. Order pronounced in the open court on 09/05/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 09/05/2023
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi