

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
ITA No. 225/Mum/2023 (A.Y. 2013-14)

Pearl Biofuel Pvt. Ltd.

601, 6th Floor, Western Palace,
Link Road, Mumbai-400092.

PAN: AAAGCP4845H

..... Appellant

Versus

ITO-5(2)(4),

Mumbai-400020

..... Respondent

Appellant/Assessee by
Respondent/Department by

: Ms. Mona Kakwana, CA,
: Sh. Ram Prakash Rastogi,
Sr. DR

Date of hearing : 30/05/2023
Date of pronouncement : 30/05/2023

ORDER

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

The Appellant/Assessee herein has preferred this appeal against the order dated 15.12.2022 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-10, Mumbai {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for AY 2013-14.

2. In the instant case, the Assessing Officer (AO) vide order dated 23.03.2016 computed the income of the assessee at Rs. 12,48,13,710/- as against the income declared at Rs. "NIL" and made following disallowances:

a.	Rejection of book results and Estimation of profit	Rs. 58,17,955/-
b.	Addition u/s. 68	Rs. 4,40,00,000/-
c.	Addition u/s. 69B	Rs. 7,49,95,752/-

and consequently initiated the penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') and vide penalty order dated 30.09.2016 imposed the penalty of Rs. 4,04,95,809/- @ of 100% of the tax sought to be evaded on the income of Rs. 12,48,13,710/-.

3. The assessee being aggrieved challenged the imposition of penalty before the Ld. Commissioner but with a delay of around four months in filing of appeal. The Ld. Commissioner, vide impugned order, dismissed the appeal of the assessee *in limine* on account of delay mainly on the ground "that the assessee had filed a

very general request for condonation of delay vide letter dated 10.12.2022. He has cited health issues of the director of the company for delay in filing the appeal. No documentary evidence whatsoever has been filed in support of his reply despite clear directions from this office. It has also not been specified whether the company has not complied with any other statutory obligation like filing of return of income, filing of return before the Registrar of Companies etc. in this period. It has also been mentioned that the director of the company is now suffering from cancer also. It is not clear as to how the unfortunate occurrence of disease at this point of time caused delay in filing of appeal in 2016. It is clear that reply of the Ld. AR of the appellant is totally unsubstantiated and cannot be treated as 'sufficient cause'.

4. The assessee being aggrieved is in appeal before us. The Ld. Departmental Representative (DR) vehemently supported the order passed by the Ld. Commissioner and claimed that order under challenge does not require any reference as the same does not suffer from any perversity, illegality and/or proprietary, whereas the Ld. Authorized Representative (AR) submitted a certificate whereby it reflects that the assessee is having various health issues since 2016 for that he is undergoing treatment. Considering

the peculiar facts and circumstances specific to the health issues of the director of the Assessee company, for the just decision of case and for the ends of justice, we deem it appropriate to condone the delay and to remand the instant case to the file of the Ld. Commissioner on merits, suffice to say by affording reasonable opportunity of being heard to the assessee.

5. In the result, appeal filed by the Appellant/Assessee stands allowed for statistical purpose.

Order pronounced in the open court on 30th day of May, 2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 30/05/2023
SK, Sr.PS

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) /The CIT(A)-
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR,
ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt.Registrar)
ITAT, Mumbai