

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 865 /DEL/2023 A.Y. 2016-17
AND
ITA No. 866 /DEL/2023 A.Y. 2017-18**

M/s Ekalavya Gift Gaileries Pvt. Ltd., IPSO Legal, H-35, 1 st Floor, Jangpura Extension, New Delhi-110014 PAN- AADCE4842N	<u>Vs</u>	Income-tax Officer, Ward 1(5), Faridabad.
APPELLANT		RESPONDENT
Assessee represented by	Shri Shyam Sundar, Adv.	
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	04.09.2023	
Date of pronouncement	04.09.2023	

ORDER

PER ANUBHAV SHARMA, JM:

Heard and perused the record.

2. The assessee has preferred these appeals for A.Y. 2016-17 and 2017-18, challenging the order of learned CIT(A), National Faceless Appeal Centre (NFAC), Delhi, confirming the penalty levied by the AO amounting to Rs. 10,000/- for non-compliance of the notices u/s 142(1) of the Act.

3. During the course of hearing it transpired that the learned CIT(A) has not decided the issues on merits at all and had dismissed both the appeals on the basis of delay in filing the same.

3.1. As submitted by learned AR, the order reflects that before the learned CIT(A) no separate application for condonation of delay was filed and instead of writing the reasons for delay in column no. 15 of form no. 35, it was mentioned that reasons for delay will be submitted at the time of hearing. Learned CIT(A) also observed that form no. 35 was not accompanied by any affidavit seeking the condonation of delay.

4. The Bench is of the considered opinion that certainly condonation of delay is not a matter of right and is a matter of discretion, however, when a litigant is being non suited on the basis of delay in seeking redressal, the litigant needs an opportunity to be called to explain the reasons for delay. Admittedly it is not a case where the assessee while filing the appeal before the learned CIT(A) had not acknowledged delay or otherwise ignored the delay, as it was mentioned in form no. 35 that the reasons will be explained at the time of hearing. Once this aspect was in the knowledge of the learned CIT(A), then being a quasi judicial Authority, it was supposed to call upon the appellant to justify the delay in filing the appeal. The order does not disclose if any opportunity of hearing on this aspect was given. Therefore, the order of learned CIT(A) is not sustainable and accordingly set aside.

5. **The appeals are allowed for statistical purposes** and the issue of condonation of limitation and subsequent determination on merits, if needed, are restored to the file of learned CIT(A) to decide the question of delay of limitation in filing appeal, after giving due opportunity of hearing to the assessee.

Order pronounced in open court on 04.09.2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI