

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1168/Del./2023
(ASSESSMENT YEAR : 2016-17)**

Yashant Gupta,
93, Raja Enclave, Pitampura,
Delhi – 110 034.

vs. ITO, Ward 40 (5),
New Delhi.

(PAN : ALRPG4244Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vijay Kumar, CA
REVENUE BY : Ms. Sapna Bhatia, CIT DR

Date of Hearing : 13.09.2023
Date of Order : 15.09.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.
CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated
21.02.2023 pertaining to the assessment year 2016-17.

2. Grounds of appeal taken by the assessee read as under :-

“1. On the facts and circumstances of the case the order passed by the Id. CIT (A) is wrong on facts and bad in law.

2. On the facts and circumstances of the case and in law the Id. CIT(A) has erred in not providing the proper opportunity to rectify the alleged defect in appeal of not providing reasons for delay and therefore not considering the reply of the assessee on

merit and dismiss the appeal on technical ground whereas the fact of the matter is that the assessee could not file the appeal within time because of sufficient reasons and the matter is having good merits to be heard.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the merits of addition made the by Id. Assessing Officer who has made addition on account of an information of Import Purchase of Rs.67,68,005/- that being an expenditure of business and being the assessee is declaring its income on presumptive basis under section 44AD, such expenditure could not be disallowed on the pretext that the assessee has not provided the details of such expenditure.

4. On the facts and circumstances of the case and in law the impugned passed by the Ld. Assessing Officer and heard on merit by Ld. CIT(A) is bad in law as no demand notice, which is the concluding part of the assessment proceeding has been served on the assessee.”

3. In this case, in the assessment order, Assessing Officer made addition of Rs.67,68,005/- being undisclosed income from other sources. Against the above order, assessee appealed before the ld. CIT (A). Ld. CIT (A) noted that there was a delay of 169 days and assessee had not given reason for delay in the appeal filed but has contended that the same shall be produced at the time of hearing. Ld. CIT (A) did not find it acceptable, hence he dismissed the appeal being time barred.

4. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

5. Ld. Counsel of the assessee prayed that an opportunity may be granted to the assessee before the Id. CIT (A) to give proper reasons for condonation of delay and thereafter consider the issue.
6. Per contra, Id. DR for the Revenue did not have any objection to the above proposition.
7. Upon careful consideration, we remit the issue to the file of Id. CIT (A). Ld. CIT (A) shall first consider the issue of condonation of delay before him by giving the assessee proper opportunity of being heard. Thereafter, he will adjudicate as per law.
8. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on this 15th day of September, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 15TH day of September, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**