

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.70/Ind/2023
Assessment Year: 2012-13

Khilla Colonizers P.Ltd., Bhopal	<u>बनाम/</u> Vs.	ACIT, Circle 2(1), Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AADCK7900R		
Assessee by	Shri Yash Kukreja and Shri Hitesh Chimnani, CAs	
Revenue by	Ms. Simran Bhullar, CIT DR	
Date of Hearing	21.09.2023	
Date of Pronouncement	22.09.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 07.11.2022 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 18.12.2019 passed by learned ["AO"] u/s 147 read with section 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides and case-records perused.

3. The registry has informed that the present appeal is delayed by 55 days and therefore time-barred. Ld. AR submits that the assessee has filed

an application for condonation of delay supported by an affidavits on stamp. On perusal of the application/affidavit, we observe that the assessee-company has stated that its accountant, Shri Anil Mishra, had to take leave and visit his native and during his absence, the documents left unattended. Subsequently, after resuming work, the accountant realized his mistake and immediate steps were taken to file appeal. In support, the assessee has also filed one affidavit of Shri Anil Mishra, accountant and another affidavit of Shri Sunny Chandani, director. Ld. AR very humbly submits that there is no deliberate lethargy, negligence or mala fide intention of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He further submits that the sole reason of delay is the mistake of accountant. Ld. DR left the matter to the wisdom of Bench. We have considered the explanation of assessee and in absence of any contrary fact or material on record, the assessee is found to have a reasonable cause for delay in filing the present appeal. Placing reliance on the decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, we take a judicious view; condone delay and proceed with appeal.

4. Section 250(6) of the Income-tax Act, 1961 provides "*The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*". We observe that in the present case, the Ld. CIT(A) has dismissed the assessee's appeal, although due to non-prosecution by assessee on the dates of hearing fixed by Ld. CIT(A), but still without complying with the mandate of section 250(6). Therefore, the impugned first appeal-order passed by Ld. CIT(A) deserves to be set aside and the matter is fit for remand to the file of Ld. CIT(A) for a proper adjudication. Ld. DR fairly agrees to this but prays to direct the assessee to represent his case before Ld. CIT(A) and do not seek unnecessary adjournments. In view of this and also having regard to the principle of natural justice and fair play, we deem it fit to give one more opportunity to assessee so that the assessee can

represent his case before CIT(A) for a proper adjudication. Accordingly, we remand this matter back to the file of Ld. CIT(A) for a fresh adjudication after giving opportunity of hearing to assessee. The assessee is also directed to ensure participation in the hearings fixed by Ld. CIT(A) and do not seek unnecessary adjournments.

5. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in the open court on 22.09.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 22.09.2023

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore