

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस.एम.सी.", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
आअसं.2197/मुं/2023 (नि.व. 2009-10)
ITA NO.2197/MUM/2023 (A.Y.2009-10)

Munis Ahmedally Sura,
127-A, MAM Traders, Kasara Street,
Darukhana, Mazgaon,
Mumbai – 400 010.

PAN: AALPS-7540-N

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer 20(2)(1),
2nd Floor, Piramal Chamber,
Lalbaug, Parel,
Mumbai – 400 012

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Himanshu Gandhi
प्रतिवादी द्वारा/Respondent by : Shri Suhas Dabade
सुनवाई की तिथि/ Date of hearing : 18/09/2023
घोषणा की तिथि/ Date of pronouncement : 18/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] dated 17/03/2023, for assessment year 2009-10.

2. This appeal is time barred by 30 days. The assessee has filed an affidavit explaining delay in filing of appeal. Shri Himanshu Gandhi appearing on behalf of the assessee submitted that the delay occurred in filing of the appeal as the Chartered Accountant who was representing the assessee before the CIT(A) had

expired. No one from the office of Chartered Accountant informed the assessee about the death of the Chartered Accountant, consequently the assessee remained unrepresented before the CIT(A). The assessee came to know about an ex-parte order by the CIT(A) after the same was received by the assessee. The assessee approached the office of Chartered Accountant for filing of appeal, it was thereafter the assessee came to know about the demise of Chartered Accountant. The delay occurred in filing of the appeal, as necessary documents i.e. Form No.35, statement of facts and grounds of appeal before the First Appellate Authority were not available with the assessee and the same were lying with the Chartered Accountant. Since, there was no one in the office of Chartered Accountant to trace the documents, it resulted in delay in filing of present appeal. The Id. Authorized Representative of the assessee submitted that the delay in filing of appeal was for the bonafide reasons, beyond the control of assessee. The Id. Departmental Representative objected to condonation of delay in filing of appeal.

3. Both sides heard. A perusal of the affidavit seeking condonation of delay shows that the delay in filing of appeal was caused due to death of the Chartered Accountant, Shri Shabbir K. Ebrahim, who was handling the case of assessee before the CIT(A). The assessee was not able to retrieve necessary documents for filing of the present appeal from the office of late Shri Ebrahim. We are satisfied that the delay in filing of appeal is not on account of negligence on the part of assessee, but was on account of bonafide reasons stated in the affidavit. The delay of 30 days in filing of appeal is condoned, and the appeal is admitted for hearing.

4. A perusal of the impugned order shows that the CIT(A) has decided the appeal in ex-parte proceedings. Non-representation of the assessee before CIT(A), was due to death of the Chartered Accountant. Taking into consideration entire facts, we deem it appropriate to restore this appeal back to the file of CIT(A) for re-

adjudication on merits after affording reasonable opportunity of hearing/making submissions to the assessee, in accordance with law.

5. The assessee is directed to appear /make submissions before the CIT(A) without fail, upon service of notice. The impugned order is set-aside and appeal of assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on Monday the 18th day of September, 2023.

Sd/-

(S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 18/09/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

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

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai