

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1912/MUM/2023 (A.Y. 2017-18)

Nikita Rameshchandra Khetani Block No. 202, Prakash Building R.B. Mehta Road, Ghatkopar (E) Mumbai - 400077 PAN: BCSPK0110J	v.	Income Tax Officer – 27(2)(4) Room No. 418, 4th Floor, Tower No. 6 Vashi Railway Station Commercial Complex Vashi, Navi Mumbai - 400703
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Devendra Jain
Department Represented by	:	Shri Suhas Dabade
Date of Conclusion of Hearing	:	21.09.2023
Date of Pronouncement	:	21.09.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 23.07.2021 for the A.Y.2017-18.

2. At the outset, we observe that the present appeal is filed by the assessee with a delay of 611 days and assessee also filed an affidavit in this regard and prayed for condonation of delay. Assessee filed an affidavit dated 28.04.2022 and submitted as under: -

"1. That the Order u/s 250 dated 23/07/2021 was passed by National Faceless Appeal Centre, CIT(A), for A.Y. 2017-18 and the same was uploaded on the e-filing portal and was sent on the email id of the employee of the Consultant who left job two years before without giving any information on this matter. Also I am suffering from several medical conditions/ ailments such as Central Diabetes Insipidus, Hypothyroid, Hypogonadism, Amenorrhoea and recurring UTI since March 2021 till date. Central Diabetes Insipidus being a very rare disorder and also a lifelong disease with no definite cure. For UTI, I had to undergo a Surgery (Cystoscopy with Urethral Calibration). Medication/ treatment still is in process. I was feeling very low and was not under a stable mind frame because of plethora of chronic medical ailments. Hence the said impugned proceedings went unnoticed by me.

2. Then in the month of March, 2023 when I received the Penalty Order dated 21.03.2023 and checked the status of appeal proceedings at e-filing portal and came to know that the proceedings were closed and order under section 250 was passed on 23.07.2021. It was because of this reason; I could not file appeal within the statutory limitation period of 60 days.

3. Hence, this affidavit is being made in support of my application to the Hon'ble Income Tax Appellate Tribunal, Mumbai to condone the delay in filing of appeal."

3. Ld. DR objected for the condonation of delay and however, he has not filed any submissions against the affidavit as well as the facts described in the above affidavit.

4. Considered the submissions of both parties, we found that the reasons brought on record by the assessee are relating to her health conditions. It is fact on record that assessee has failed to file the appeal in time. For the sake of overall justice, the Hon'ble Supreme Court in the case of Collector, Land Acquisition v. MST. Katiju and others, [1987] 167 ITR 471, held as under: -

"3. The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy.

4. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense and pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have

vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

5. Respectfully following the ratio laid down in the above judgment, we condone the delay in filing the appeal and decide the appeal on merits.

6. Assessee has raised following grounds in its appeal: -

"1. In the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC), CIT (Appeals), Mumbai has erred in passing an ex-parte order without considering the documents submitted by the appellant thereby passing an order in gross violation of the principles of natural justice.

2. In the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC), CIT(Appeals), Mumbai has erred in making additions of Rs. 17,31,000 under section 69A on account of cash deposit in Kotak Mahindra Bank by rejecting the explanation offered by the assessee merely by considering the Human Probability Test and on surmises and conjectures declaring the income which is not commensurate with the cash deposits.

3. In the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC), CIT(Appeals), Mumbai has erred in invoking the provisions of Sec 115BBE of the Act and charging the rate of 60% on the cash is deposited in the Bank prior to 16th December 2016 i,e, prior to the date on which the Taxation Laws (Second Amendment) Act, 2016 received the assent of the President, instead of the then applicable rate of 30%.

4. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other."

7. At the time of hearing, Ld. Counsel for the assessee submitted that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld. Counsel for the assessee requested that the matter may be restored to the file of the Ld.CIT(A).

8. Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

9. Considered the rival submissions and material placed on record, on a perusal of the Ld.CIT(A) order, we find that Ld.CIT(A) has passed exparte order and sustained the action of the Assessing Officer. Considering the totality of facts and submissions of the Ld. AR and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard in the interest of principles of natural justice. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Needless to say that the Ld.CIT(A) shall give adequate opportunity of being heard

to the assessee. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

10. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st September, 2023.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER
Mumbai / Dated 21.09.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum