

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

BEFORE SHRI N. K. CHOUDHRY, JM

I.T.A. No. 2226/Mum/2023
Assessment Year: 2016-17)

**Shree Kutch Nalia
Bhanushali Mitra Mandal**
C/o Suryavanshi Stores
Tarun Bharat Society,
Chakala Andheri,
Maharashtra

Vs.

ITO-(Exemption),
Ward 2(3), Mumbai

PAN No. **AAFTS 0619 A**

Appellant) : Respondent)

**Appellant/Assessee by
Revenue/Respondent by** : Shri Aditya Ramachandran
: MS Smitha V. Nair

Date of Hearing : 03.10.2023
Date of Pronouncement : 18.10.2023

O R D E R

Per N. K. Choudhry, JM:

The Assessee has preferred this appeal against the order dated 24.04.2023 impugned herein passed by National Faceless Appeal Centre (NFAC), Delhi {in short 'NFAC'}/ Ld. Commissioner of Income Tax (in short " Ld. Commissioner") u/s 250 of the Income Tax Act 1961 (in short 'the Act').

2. In the instant case, the CPC/AO vide intimation/order dated 2nd Jan, 2019 u/s 143(1) of the Act for A.Y under consideration, denied the exemption benefits u/s 11 of the Act, due to non filing of audit report in form 10B online within the due date as prescribed, against which the Assessee preferred first appeal before the Id. Commissioner with a delay of more than 38 months in filing the appeal, who dismissed the same in limine, by not condoning such delay mainly on the reason that even during the course of appellate proceedings, the Assessee neither accepted any delay in filing the appeal nor made any request in respect of condonation of delay in filing the appeal.

3. The Assessee before this Bench submitted that after the intimation/order dated 2nd Jan, 2019, the Assessee instead of filling first appeal before the Id. Commissioner, preferred an application dated 14th Sept, 2021 u/s 119(2)(b) of the Act for condonation of delay in filing Form 10B of the Act, before the Id. CIT(E), who vide order dated 8th March, 2022, rejected the said application and did not condone the delay in filing of Form No. 10B of the Act. Thereafter immediately on dated 11th March, 2022 the Assessee preferred first appeal before Id. Commissioner with a delay of approximately 38 months.

The Id. AR, Sh. Aditya Ramachandran honestly conceded that though there was delay in filing of first appeal before the Id. Commissioner however, it is correct that in Column No. 14 of the Form No. 35, the Assessee given answer “ **No**” to the question “**whether there is delay in filing appeal**”. The Id. Counsel prayed that answer “No” may be inadvertently or due to bonafide mistake has been written and therefore the same may be considered as bonafide mistake or unintentional and thus lenient view may be taken and the Assessee be given an opportunity of being heard, may be by putting any condition.

4. On the contrary, Id. DR refuted the claim of the Assessee and emphasized that the action and admission by mentioning “NO” in the column No. 14, which pertains to the details qua delay in filing the appeal, the Assessee misleded the Id. Commissioner and even otherwise the reason submitted by the Assessee is neither bonafide nor logical, hence the appeal of the Assessee may be dismissed and impugned order may be confirmed. In any eventuality, if the case is remanded to the file of Id. CIT(A) then heavy cost may be imposed .

5. Having heard the parties and perused the material available on record and given thoughtful consideration to the peculiar facts and circumstances of the case, I observe that the intimation/order dated 2nd Jan, 2019 was passed u/s 143(1) of the Act,

whereby the benefits of section 11 of the Act were denied to the Assessee for non-filing of Form-10B online along with return of income. The Assessee instead of challenging the said intimation/order dated 2nd January, 2019 before the Id. Commissioner in first appeal, preferred an application u/s 119(2)(b) of Act for condonation of delay in filing Form-no. 10B before the Id. Commissioner Mumbai, which was rejected vide order dated 8th March, 2022 and thereafter immediately, the Assessee on dated 11th April, 2022 challenged the intimation/order dated 2nd January, 2019 by filling first appeal before the Id. Commissioner in which in column no. 14 of form 35 "whether *there is a delay in filing the appeal*" written "NO" and denied the delay and thereafter as well not acted diligently as it neither accepted any delay in filling of appeal nor made any request qua condonation of delay, as observed by the Id. Commissioner, therefore the Assessee do not deserve any leniency. However, considering the peculiar facts and circumstances in totality, as the Assessee remained entangled with the proceedings before wrong forum may be due to wrong advise or un-intentional or bonafide mistake, which culminated into the delay for availing appropriate statutory remedies before appropriate Forum/Authority, hence for the just decision of the case and ends of the justice, but subject to deposit of Rs. 11,000/- in the "National Relief Fund" within 30 days of its order, I am inclined to set aside the impugned order and remand the instant case to the file of Id. CIT(E) for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee. Accordingly the case is remanded to the file of Ld. Commissioner.

6. In the result, appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 18-10-2023.

Sd/-
(N. K. CHOUDHRY)
Judicial Member

SK, Sr.PS.

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai