

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

**BEFORE SHRI B R BASKARAN, AM &
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 2231/Mum/2023
Assessment Year: 2014-15)

Jupitar Industrial Works,
1, Parshiram Ram Maruti Road,
Naupada, Thane-400062.

PAN No. **AAAFJ9122E**

**Asstt. Commissioner of
Income Tax, Circle-1,**
Vs. Ashar I.T. Park, 6th Floor,
Road No. 16Z, Wagle Indl.
Estate, Thane-400604.

Appellant) : Respondent)

Appellant/Assessee by : Shri Shashank A. Mehta, Ld. CA
Respondent/Department by : Shri Ujjawal Chavan, Ld. Sr. DR

Date of Hearing : 25.10.2023
Date of Pronouncement : 30.10.2023

O R D E R

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred this appeal against the order dated 25.01.2023 impugned herein passed by National Faceless Appeal Centre (NFAC), Delhi/ Ld. Commissioner of Income Tax (Appeals)-2, Thane {in short 'Ld. Commissioner'} under section 143(3) of the Income Tax Act 1961 (in short 'the Act').

2. At the outset, we observe that there is a delay of 86 days in filing the instant appeal, on which the Assessee has claimed that the impugned order was passed on 25.01.2023 by the Ld. Commissioner and the same was uploaded on the e-filing portal and sent through email as well, however, the email was missed by the Assessee and it is a fact that no physical copy of the order was sent to the Assessee. Somewhere in the mid month of May 2023 while checking the status of appeal filed on 05.12.2016, at e-filing portal, the Assessee came to know that the appeal proceedings were concluded and the impugned order has already been passed. Somehow the appellant proceedings and passing the impugned order on 25.01.2023 missed from the knowledge of the Assessee, which resulted into delay of 86 days in filing the instant appeal.

3. We have given thoughtful consideration to the contention raised by the Assessee with regard to the delay in filing the instant appeal, though the Ld. Departmental Representative (DR) has objected and refuted the claim of the Assessee, however, it is a fact that there is nothing on record to disbelieve the claim of the Assessee, therefore, considering the same as well as the tenure of delay which is minuscule, we are inclined to condone the delay of 86 days, hence, the same is condoned.

4. Coming to the merit of the case, we observe that the Assessee had filed an appeal on dated 05.12.2016 challenging the impugned order dated 31.10.2016 passed by the Ld. ACIT, Circle-1, Thane passed u/s 143(3) of the Act. It is a fact that as it appears from the

impugned order that in paragraph-4 that the only notice for hearing was issued to the Assessee on 17.01.2023 which remained un-complied with by the Assessee and therefore in the constrained circumstances, the Ld. Commissioner dismissed the appeal of the Assessee in the absence of any reply and/or documents. Hence, considering the peculiar facts and circumstances and for the just decision of the case and for the ends of justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee.

4.1 The Assessee is also directed to appear, if requires before the Ld. Commissioner and to file the relevant documents which would be necessary for real adjudication of the case and in case of default , the Assessee shall not be entitled for any leniency.

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

Order pronounced in the open court on 30-10-2023.

Sd/-

(B R BASKARAN)
Accountant Member

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