

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

**BEFORE SHRI ABY T. VARKEY, JM AND S PADMAVATHY S, AM**

आयकर अपील सं/ I.T.A. No.2490/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2020-21)

Asmita Abhishek Co-op Society Ltd. 1, M/s. Asmita Abhishek Co-op Society Ltd., Opp to Dalmiya College, Sunder Nagar, Malad (West), Mumbai-400064.	<b>बनाम/</b> Vs.	CPC/ITO-24(1)(1) 3 <sup>rd</sup> Floor, Piramal Chambers Lalbaugh, Mumbai-400034.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAA6326N</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri N. R. Agrawal
Revenue by:	Shri Rajesh Meshram (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 25/10/2023

घोषणा की तारीख /Date of Pronouncement: 31/10/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 28.06.2023 for the assessment year 2020-21.

2. The main grievance of the assessee is that the Ld. CIT(A)/NFAC has passed an *ex-parte* order without hearing the assessee and also without going into the merits of the grounds of appeal raised by it.

3. In this regard, we note that the Ld. CIT(A) has passed an *ex-parte* order, and has erroneously taken note that the intimation order passed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") dated 25.11.2021 was received by the assessee on 25.11.2021, whereas



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the assessee received the intimation order on 27.06.2022, and drew our attention to page no. 26 of the *appeal-set* wherein, we note that the assessee had received the intimation order u/s 143(1) only on 27.06.2022 at 5.50 PM. And thereafter, the assessee had filed the appeal on 18.07.2022 (*refer page no. 11 of appeal-set*) which means that assessee had filed the appeal well within the time prescribed by Income Tax Act. The Ld. AR fairly pointed out that the Ld. CIT(A) made the aforesaid erroneous observation that intimation order u/s 143(1) of the Act was served upon the assessee on 25.11.2021 because of the mistake on the part of the assessee in filing up the Form No.35, column no. 2C wherein the date of service was wrongly entered as 25.11.2021. And this erroneous entry created the confusion and led the Ld. CIT(A) to observe that there was a delay of 204 days and on the basis of which he was pleased to dismiss the appeal ex-parte qua assessee. Since we find that the information given by assessee to Ld CIT(A) regarding service of the impugned order u/s 143(1) of the Act was erroneous as noted supra; and assessee in-fact received the impugned order only on 27.06.2022 at 5.50 PM (*refer page no. 26 of appeal set*); and un-disputably since the assessee had filed the appeal before Ld CIT(A) within the thirty (30) days as provided for u/s 249(2) of the Act, we hold that the appeal was filed within the statutory time limit u/s 249(2) of the Act, because the limitation time for filing of appeal starts running from the date when the aggrieved party received the impugned order as held by the Hon'ble Bombay High Court in the case Darypaur Shetkari Gining and Pressing Factory Vs. ACIT (2021)



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123 taxmann.com 301 (Bom). Therefore, we are inclined to set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A) with a direction to adjudicate the grounds of appeal raised by assessee in accordance to sub-section (6) of section 250 of the Act. And the assessee is directed to file written submission/relevant documents to support its grounds of appeal raised before Ld CIT(A), and request for hearing if it desires as per Rules, and Ld. CIT(A) to adjudicate grounds raised by assessee in accordance to law after hearing the assessee.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 31/10/2023.

Sd/-  
(PADMAVATHY S)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/10/2023.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार //(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai