

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
ITA No. 3150/Mum/2023
(A.Y: 2015-16)

Sher E Punjab Co-Operative Housing Society Ltd Plot No.1724, Gaden Lane, mahakali Caves Road, Andheri (E), Chakala Midc S.O Mumbai-400093.	Vs	ITO, Ward 31(2)(1) Kautilya Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai-400051.
PAN/GIR No. : AAEAS8086P		
Appellant	..	Respondent

Assessee by :	Ms. Kinjal Bhuta.AR
Revenue by :	Shri S. G. Menon. Sr.DR

Date of Hearing	08.11.2023
Date of Pronouncement	08.11.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC)Delhi / CIT(A) passed u/s 143(1) and U/sec250 of the Ac. The assessee has raised the following grounds of appeal:

- 1. The Ld Commissioner of Income Tax (Appeals)- NFAC erred in confirming the actions of Assessing Officer (CPC), failing to appreciate that adjustment made u/s143(1) of the Income Tax Act, 1961 is beyond jurisdiction*

2. The Ld Commissioner of Income Tax (Appeals) - NFAC, erred in not allowing the appellant's request for condonation of delay and thereby dismissing the appeal

3. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.

2. The brief facts of the case that the assessee is a Cooperative Housing Society registered under Maharashtra Cooperative Society Act. The assessee has filed the return of income for the A.Y 2015-16 on 28.07.2016 disclosing a total income of Rs. 69,330/- after claiming the deduction u/s 80(P)(2)(d) of the Act of Rs.6,65,681/-. Whereas the return of income was processed u/s 143(1) of the Act and the AO/ CPC has disallowed the claim of deduction u/s 80(P)(2)(d) of the Act and assessed the total income of Rs. 7,35,010/-and passed the order u/s 143(1) of the Act dated 29.09.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A),whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and also there was delay in filling the appeal. Since there was partial compliance by the assessee and delay was not explained.

Therefore the CIT(A) considering the information on record has not admitted the appeal and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has not considered the facts that the assessee has received the A.O order after some time and has filed the appeal before appellate authorities and the delay was not a wanton act. Further the Ld.AR emphasized that the assessee has good case on merits and prayed for an opportunity to substantiate with the material evidences before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. Heard the rival submissions and perused the material on record. Prima-facie, the CIT(A) has passed the order considering the fact that there is no proper compliance by the assessee in spite of providing adequate opportunity of hearing. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and delay in filling the appeal was not explained. The Ld.CIT(A) has issued the notices of hearing referred at Page 2 Para 2 of the order, but there was partial compliance and thus

the Ld.CIT(A) came to a conclusion that the assessee is not interested and reasonable cause for the delay is not explained. Whereas the assessee has raised grounds of appeal challenging the addition of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate with the condonation application. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to consider the application explaining the reasonable cause on the delay and to adjudicate afresh. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 08.11.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 08.11.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai