

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

BEFORE SHRI B.R. BASKARAN (ACCOUNTANT MEMBER)
AND
SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)

I.T.A. No.2449/Mum/2023
(Assessment year : 2012-13)

Shweta ShyamPedamkar
Room No.26, Radhnivas Chawl
MalpaDongri No.1, Dr
HegadeDavakhan Front,
Andheri East-400 093
PAN : BGZPP3221L
APPELLANT

vs Income-tax Officer, Ward-
21(4), Thane
Room No.12, B-Wing, 6th Floor,
Ashar IT Park, Wagale
Industrial Estate, Thane-400
604

RESPONDENT

Present for the
Assessee
Present for the
Department

: Shri Ajay R Singh &Akshay
Pawar
: Shri Ram Prakash Rastogi –
Sr.AR

Date of hearing : 01/11/2023
Date of : 23/11/2023
pronouncement

ORDER

Per : N.K. Choudhry (JM):

This appeal has been preferred by the Assessee against the order dated 09/11/2022 impugned herein passed by the National Faceless Appeal Centre (NFAC) Delhi / Ld. Commissioner of Income Tax (Appeals) [in short, Ld. Commissioner] under section 250 of the Income-tax Act, 1961 (in short, the Act) for the A.Y. 2012-13.

2. At the outset, we observe that there is a delay of 184 days in filing of the instant appeal, on which the Assessee has claimed that her previous tax consultant who was dealing with the case of the Assessee and had filed first appeal before the Ld. Commissioner somehow could not pursue the case of the Assessee and therefore the Assessee along with her husband approached another tax consultant, Shri Naresh kumar Jiwajka on or around 26/06/2023 who visited the portal of Income-tax department and came to know about passing of the ex-parte order dated 09/11/2022 by the Ld. Commissioner and thereafter who immediately filed the instant appeal. The Assessee being a house wife do not have much qualification and also do not know about the intricacies of income-tax law and therefore was unaware about the passing of the impugned order till 20th June, 2023. It is also a fact that vide summon dated 13/10/2017, husband of the Assessee was summoned by the Investigation Wing of Income-tax Department at Ballard Estate and his statement was also recorded wherein he has informed the department that the share transactions as involved in the instant case were done by other persons, against which the department is making separate enquiry. However, the Assessing Officer, without considering the said facts, passed the assessment order.

We have given thoughtful consideration to the contentions raised and supported by affidavit by the Assessee. As the Assessee is not a highly educated person and also not handled the income-tax portal and/or appeal proceedings directly, but in fact relied upon the actions of the consultant and may be due to mis-communication or otherwise non-communication between the Assessee and her previous tax consultant, remained absent before the Ld. Commissioner. Thus,

considering the peculiar facts and circumstances in totality we are inclined to condone the delay of 185 days in filing the instant appeal. Consequently, the same is condoned.

3. Coming to the merit of the case, as the Assessee's appeal was fixed for hearing by the Ld. Commissioner on 1/04/2021, 20/12/2021, 04/01/2022 and 24/01/2022, which remained un-complied with and resulted into passing of ex-parte impugned order in limine but not on merit by the Ld. Commissioner. We observe that the Assessee before the Assessing Officer also remained absent and neither filed any reply nor any document in order to substantiate her claim, therefore, the Ld. Assessing Officer was constrained to pass the assessment order under section 144 read with section 147 of the Act dated 28/11/2019. We also observe that period during which the Ld. Commissioner fixed the case was admittedly Covid-19 period, hence, considering the peculiar facts and circumstances of the case in totality and specifically the conduct of the Assessee qua non-appearance before the AO as well, we are of the considered view that substantial justice would be met by remanding case to the file of the Ld. Commissioner for decision afresh, but subject to deposit of Rs.5,000/- in the Prime Minister's National Relief Fund (PMNRF) within 30 days of receipt of this order. Suffice to say, the Ld. CIT(A) shall grant reasonable opportunity of hearing to the Assessee. The Assessee is also directed to appear, if necessitates, and file the relevant reply/documents as would be necessary and needed for proper adjudication of the case by the Ld. Commissioner and in case of further default, the Assessee shall not be entitled for any leniency.

4. In the result, appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced in the open court on 23/11/2023

Sd/-

**(B.R. BASKARAN)
ACCOUNTANT MEMBER**

sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Pavanan

प्रतिलिपिअग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

Asstt.Registrar / Senior Private
Secretary

ITAT, Mumbai