

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2965/Mum/2023  
(A.Y: 2020-21)

Jagdish Ghanshyam Pathak,A-306, Gardenia Valley of Flowers, Thakur Village, Kandivali(E), Mumbai-400101.	Vs.	I.T.O-16(2)(1), Aayakar Bhavan, Mumbai.
PAN/GIR No. : AAAPP5470H		
Appellant	..	Respondent

Appellant by :	Shri Milind Datani.AR
Respondent by :	Shri Ujjawal Kumar Chavan. Sr. DR

Date of Hearing	27.12.2023
Date of Pronouncement	28.12.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The CIT (A) erred in not condoning the delay in filing of the appeal and dismissing the appeal holding that delay was not bonafide and there was negligence on the part of the appellant.*

*2.The CIT(A) erred in confirming the determination of the total income at Rs. 77,16,630/- and demand of Rs.1,69,550.*

2. The brief facts of the case that, the assessee is engaged in the business and has filed the return of income for the A.Y 2020-21 on 02.02.2021 disclosing a total income of Rs.73,46,380/-. Subsequently the return of income was processed u/sec 143(1) of the Act with an addition of Rs.3,70,243/- and the total income was assessed at Rs.77,16,630/-vide order dated 15.12.2021.

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 properly explained. Therefore the CIT(A) considering the information on record has not admitted the appeal on maintainability 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 and has filed the appeal before appellate authorities and the delay was not a wanton act but the circumstances beyond the control of the assessee. 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. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We 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 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 explaining the reasonable cause with evidences. 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. And, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 28.12.2023.

Sd/-  
( GAGAN GOYAL )  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 28.12.2023

KRK, PS

आदेश की प्रतिलिपि अगेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai