

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC” DELHI**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.3393/DEL/2023
Assessment Year 2021-22

Ujala Holdings 16, Community Centre New Friends Colony New Delhi.	Vs.	ITO Ward-27(1) New Delhi
TAN/PAN: AAACU0125H (Appellant)		(Respondent)

Appellant by:	Shri V. Rajkumar, Adv.		
Respondent by:	Ms. Kirti Sankratyayan, Sr.DR		
Date of hearing:	02	01	2024
Date of pronouncement:	02	01	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), ADDL/JCIT (A)-9, Mumbai (‘CIT(A)’ in short) dated 31.10.2023 arising from the intimation dated 27.10.2022 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2021-22.

2. The grounds of appeal raised by the assessee read as under:

“1. On the facts and in the circumstances of the case and in law the ADDL/JCIT(A)-9, Mumbai erred in -

- 1. dismissing the appeal filed against order passed u/s 143(1) of the Act by the CPC without providing due and adequate opportunity of*

hearing;

2. confirming the following additions made to the returned income

a. Rs.5,15,130/- on account of dividend received treating the same as business income thereby taxing the same income twice;

b. not allowing credit for TDS on dividend income in a sum of Rs.1,02,690/- although the same was duly claimed in the return ;”

2. When the matter was called for hearing, the Id. counsel for the assessee referred to the first appellate order and submitted at the outset that the proceedings before the CIT(A) could not be attended as the date of hearing was fixed on 30.10.2023 which was the date about which heavy burden is witnessed on the Tax Practitioners to adhere to limitation period for tax compliances. It is due to this reason that the proceedings could not be attended resulted in an *ex-parte* order. The Id. counsel thus submitted that reasonable cause exists for non-compliance and urged for restoration of matter to the file of the CIT(A) for fresh determination of the grievances in accordance with law.

3. The Id. DR for the Revenue, on the other hand, relied upon the first appellate order and pointed out that the delay in filing the appeal before the CIT(A) was also not condoned by the CIT(A).

4. I have carefully considered the rival submissions and perused the first appellate order.

5. As pointed out on behalf of the assessee, intimation under Section 143(1) under challenge before the CIT(A) dated 27.10.2022 was taken cognizance by the assessee on 04.11.2022 although it might be uploaded on e-portal on or

about the date of order. The appeal has been filed on 2nd December, 2023 and if 04.11.2022 when such intimation came to the notice of the assessee is reckoned, the appeal has been filed well within time. Otherwise also, there is hardly any delay of 5-6 days which ought to have been given liberal and benign consideration as no prejudice has caused to revenue. I find merit in such plea. The cause of substantial justice deserves to be preferred over such technical considerations. Following the principles in *Collector Land Acquisition Anantnag & Anr. vs. Mst. Katiji & Ors. (1987) 2 SCC 107*, the CIT(A) is directed to condone the delay in filing the appeal before him.

6. I also find merit in the plea that dismissal of the appeal *in limine* is unjust and unfair owing to non attendance in last week of October, 2022 when major tax compliances are obligated on the tax payers. It is a matter of common knowledge that the tax counsels are tied up in tax compliances and such non-attendance ought not to have been viewed strictly to the hilt. Reasonable cause for non-attendance to the proceedings before CIT(A) thus exists. The assessee deserves a fair opportunity to pursue its appeal. A fairplay warrants that an opportunity is provided to the assessee to prevent miscarriage of justice. The impugned first appellate order thus deserves to be set aside.

7. Noticeably, the CIT(A) is obligated under Section 250(6) of the Act to dispose of all the grounds of appeal placed before its consideration. The appeal cannot be dismissed for warrant of prosecution *in limine* without

compliance of Section 250(6) of the Act. The CIT(A) has dismissed the appeal summarily without determining the issues on merits.

8. Hence, in totality, the first appellate order requires to be set aside for adjudication *denovo* in accordance with law.

9. It shall be open to the assessee to support and corroborate the grounds raised before the CIT(A) in accordance with law. Needless to say, reasonable opportunity shall be given to the assessee while disposing of the appeal. Hence, the impugned order of the CIT(A) is set aside and restored back to the file of the CIT(A) for fresh determination.

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

Order was dictated and pronounced in the open Court on 02/01/2024

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **/01/2024**

Prabhat