

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 990/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2015-16)

Kasturbhai A. Patel 763, Sonasan, Tal: Prantij, Dist. Sabarkantha, Gujarat, 383210	बनाम/ Vs.	The Income Tax Officer Ward-4, Himmatnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : CBFPP7467L		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Tej Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri V. K. Mangla, Sr. DR

Date of Hearing	12/02/2024
Date of Pronouncement	14/02/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the assessee is directed against the order dated 19.01.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 05.12.2019 passed by the ITO, Ward-4, Himatnagar, under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961, (hereinafter referred to as ‘the Act’) for Assessment Year 2015-16.

2. The appellant has come up in appeal against the order dated 19.01.2013 passed by NFAC, Delhi, whereby and whereunder the addition of Rs.15,85,000/- made by the Ld. AO under Section 69A of the Act has been upheld. Though the appellant was issued two notices under Section 250 of the Act on 04.01.2021 and 30.12.2022, the appellant could not appear before the Revenue authorities and without the matter being represented by the appellant, the same was finalized by the First Appellate Authority.

3. Apart from that, we also find that there is substantial delay of 259 days in filing the appeal before us. In support of which, an application for condonation of delay has been filed by way of an affidavit affirmed by the appellant herself, the contents whereof is as follows:

“That I the above named deponent solemnly affirm and most respectfully the petitioner submit as under.

1. *That the CIT Appeal order passed u/s. 250 of I. T. act and was served on assesses through email id address use of Tax Consultant Namely Shri Satishbhai Soni, office at At & Post: Salal, Tal Himmatnagar, Dist. Sabarkantha on 19-01-2023 for the A.Y. 2015-16. The Appeal was due to be filed on 18-03-2023.*
2. *That the Appeal could not be filed against aforesaid order only on 18-03-2023 were as the same was due to be filed on 04-12-2023 resulting in delay of 261 days.*
3. *That your assesses is a farmer and un-educated person. The assesses totally depend on tax Consultants namely Shri Satishbhai K. Soni, who was expired on 21-12-2020, thereafter, no any communication received from my tax Advocate, due to death of Tax Consultants. The copy of death certificate of my Tax Consultants is enclosed herewith.*

4. *That, I received notice for the assessment year 2015-16 regarding non-compliance against notices issued by NFAC dated 07-11-2023, which was served on 17-11-2023 to me by post.*
5. *My Tax Consultant was filed first appeal before due date of filing first Appeal. After the filing first appeal my Tax Consultants was expired on 21-12-2020. The email and mobile number mentioned in the Income tax Portal that was of my Tax Advocate email and mobile number. So, all the notices were served to email through of my Tax advocate and I could not received any information about notices issued in favor of me u/s. 250 of I. T. act dated 04-01-2021 and 30-12-2022. So, I could not able to furnished any reply response to the notices issued by National Faceless Appeal Center (NFAC), Delhi.*
6. *That your goodself is empowered u/s. 249 (3) of the Act to condone delay in filing Appeal.*

Prayer

It is, therefore, most respectfully prayed that the delay of 261 days in filing the appeal may very kindly be condoned and the appeal be kindly admitted.”

4. It appears from the affidavit that the Tax Consultant expired on 21.12.2020 and the appellant also not received any communication from the said Consultant, thus, could not appear before the First Appellant Authority. In spite of notice being served upon him as claimed by the Revenue because of death of appellant's Tax Consultant, the matter ultimately remained unrepresented, such facts pleaded by the appellant seems to be genuine and is found to be acceptable. Hence, delay is condoned.

5. As it is an admitted fact that the appellant could not represent his case before the authorities below, we find a further opportunity be given to the appellant to represent his case before the Revenue. Therefore, in order to prevent miscarriage of justice,

we set aside the issue to the file of the Ld. AO for adjudication of the issue afresh on merit and to pass a reasoned order upon granting an opportunity of being heard to the assessee and considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. The Ld. AO is directed to pass orders strictly in accordance with law.

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

This Order pronounced on 14/02/2024

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 14/02/2024

S. K. SINHA

True Copy

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

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

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad