

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

BEFORE SHRI BR BASKARAN, AM & SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No. 3327/Mum/2023
(निर्धारण वर्ष / Assessment Years: 2011-12)

Suhana Complex Pvt Ltd Office No. 312, 3 rd Floor, Standford Plaxa, Nr T- Series Bldg, Andheri West, Mumbai – 400053	बनाम/ Vs.	ITO, Ward 4(3)(4) Aayakar Bhawan Mumbai – 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMCS2191K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Digambar Jadhav
Revenue by:	Shri Nayanjyoti Nath

सुनवाई की तारीख / Date of Hearing: 06/02/2024
घोषणा की तारीख /Date of Pronouncement: 15/02/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 08.05.2023 for AY. 2011-12.

2. At the outset, we note that the appeal has been filed after the time barring date and thus there is a delay of 74 days in filing the appeal. The assessee has filed an application for condonation of delay and in support of it has filed an affidavit (duly notarized) explaining the cause for delay. And on perusal of the affidavit, it transpires that assessee had received the impugned order of the Ld. CIT(A) on 08.05.2023, and thereafter, he handed over the same to tax consultant/Advocate Mr. Bhanu Pratap Sing who unfortunately fell ill (Acute upper respiratory tract infections), and the Doctor advised him to take medication and complete bed rest. And since his family was in



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his native place at Rajasthan, he went there and, therefore he couldn't file the appeal on or before 06.07.2023. Thus there was a delay of 74 days in filing the appeal before the Tribunal, which is not intentional. Taking into consideration all the facts (supra), we are of the view that the cause for the delay was due to reasons beyond the control of the tax consultant / advocate; and assessee should not be penalized for the delay caused by tax-consultant. Therefore, we are inclined to condone the delay and admit the appeal for hearing.

3. It is noted that the Ld. CIT(A) has passed an *ex-parte* order qua the assessee. According to the Ld. CIT(A) he had issued notice twice (i.e on 03.02.2023 & 24.04.2023) and since he found that the assessee had not submitted any reply by 01.05.2023, he was pleased to dismiss the appeal of the assessee without going into merits of the appeal preferred by the assessee.

4. We do not countenance the impugned action of the Ld. CIT(A). According to us, the Ld. CIT(A) was bound to dispose of the appeal as prescribed under Sub-Section 6 of Section 250 of the Income Tax Act, 1961 (hereinafter "the Act"). Since the Ld.CIT(A) has not decided the appeal on merits as prescribed by the law, we are inclined to set aside the impugned order of the Ld. CIT(A) and restore the appeal back to his file with a direction to adjudicate the grounds raised by the assessee in accordance to the law; and assessee is directed to be diligent and file its written submissions / material to support its ground of appeal and request for hearing in accordance to the Rules and the Ld.CIT(A) to adjudicate/pass order in accordance to law.



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

Order pronounced in the open court on this 15/02/2024.

Sd/-
(BR BASKARAN)
(ACCOUNTANT MEMBER)

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 15/02/2024.
KRK, PS

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

- 1 अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
- 3 आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai