

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 872/Ahd/2023  
Assessment Year 2017-18**

M/s. N.K. Infrastructure, 10, Parkview Apartment, Nr. Hasubhai Park, Satellite, Ahmedabad-380015  <b>PAN: AALFN2558B (Appellant)</b>	Vs	The ITO, Ward-3(3)(3), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Jimit Shah, A.R.  
Revenue Represented: Shri Atul Pandey, Sr.D.R.**

Date of hearing : 20-02-2024  
Date of pronouncement : 23-02-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the appellate order dated 31.08.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the exparte assessment order passed under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The registry has noted that there is one delay in filing the above appeal. The assessee has filed a notarized Affidavit explaining that the assessee was not in town and after reaching the station, there was a delay on one delay in filing the above appeal. Ld. Sr. D.R. has no objection in condoning the delay. Thus we are satisfied with the reasons stated in the Affidavit and we hereby condone the delay of one day in filing the above appeal and now we take it up the main case for adjudication.

3. The case of the assessee that the appeal was said to be filed with a delay of 14 days before Ld. CIT(A) which was refused to be condoned as the assessee failed to explain the delay with necessary 'condonation of delay' petition. Operative portion of the order reads as follows:

*"....2. As can be seen, there is delay of 14 days in filing of the appeal. However, the appellant has neither acknowledged the same in Form 35 nor filed any condonation request.*

*A deficiency letter was therefore issued on 15.02.2021, intimating the appellant about the deficiency "appeal filed beyond time and application of condonation of delay not filed". Due to non-response, notice was issued on 08.08.2023 pointing out deficiency, non-response to earlier letter and giving time till 23.08.2023 to remove the deficiency. The annexure to the notice read as under:*

*"Appeal is filed beyond time. However, application for condonation of delay not filed Deficiency letter issued on 15.02.2021 in this regard is not responded.*

*Please explain why appeal should not be dismissed in limine.*

*Also please attach proof of service of asstt order."*

*However, the appellant has not responded to the same.*

*3. I have considered the matter. Although the appeal is filed belatedly, the same or the reason for delay is not mentioned in the appeal form. Condonation petition/reasons for the delay is/are not filed even after deficiency letter was issued and thereafter final opportunity was given to the appellant.*

.....

3.3. A delayed appeal can only be admitted if the CIT(A) is satisfied that there was sufficient cause for the delay. In this case the appellant has not mentioned the cause of delay in appeal form nor informed it in spite of sufficient opportunity. Therefore, I am constrained to treat the appeal as invalid.

4. Ld. Counsel Shri Jimit Shah appearing for the assessee submitted before us another notarized Affidavit explaining the reasons for not filing Condonation Petition before Ld. CIT(A), which states as follows:

*“AFFIDAVIT OF Mr. Kamlesh I Patel AGED 49 YEARS, Partner of M/S N.K. Infrastructure*

*That I the above named deponent, am well conversant with the facts deposed to below.*

*1. That the appeal filed by the assessee a partnership firm before the Commissioner of Income Tax (Appeals)-Income Tax Department was disposed of by National Faceless Appeal Centre by order dated 3108/2023 passed by National Faceless Appeal Centre.*

*2. That during the course of appellate proceedings, we could not submit the details before the Ld. CIT-A Faceless center, as we are a small contractor firm and just to reduce expenses we are having accounts person as a consultant who visits at our office once in a month and takes care after all compliances. However he was also not having Knowledge in relation to Income Tax Scrutiny Proceedings and since all submissions were to be done online before the Income Tax Portal, he was also not having knowledge of making submissions in online manner under Income Tax Portal. Further the data pertaining to AY 2017-18 was long and hence compiling the same took much time. However in the meantime we were compiling the data, we came to know that the order has already been passed. However to submit everything on online portal and in due time we have now appointed a Chartered Accountant and upon his advice we shall file all the data properly and in timely manner.*

*3. That we hereby give undertaking that if the matter is set-aside to the desk of CIT-A, we hereby give surety to submit the documents in due course of time and shall provide all documents satisfactory to the National Faceless Appeal Centre.*

*4. We request the Honorable Bench, considering the principles of Natural Justice, to consider our appeal.”*

5. Ld. Sr. D.R. Shri Atul Pandey appearing for the Revenue has no objection in setting aside the matter back to the file of Ld. CIT(A), NFAC for disposal of the appeal on merits, subject to filing necessary "Condonation Petition" explaining the delay.

6. We have given our thoughtful consideration and perused the materials available on record. As undertaken given in the Notarized Affidavit by the assessee and to uphold the Principle of Natural Justice, the impugned order is set aside to the file of Ld. CIT(A), NFAC with a direction to the assessee, to file appropriate Affidavit explaining the delay of 14 days in filing the appeal. It is thereafter on the satisfaction of the Ld. CIT(A), NFAC, the appeal can be decided on merits of the case and in accordance with the provisions of law.

7. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 23-02-2024

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 23/02/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद