आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं. / ITA. No. 22/JPR/2024
निर्धारण वर्ष / Assessment Years : 2014-15

Rajesh Agarwal A-25, Vivekanand Colony, Outside Chandole Gate, Jaipur.	बनाम Vs.	Income-tax Officer, Ward-4(1), Jaipur.
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: AFMPA 2541 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C.M. Batwara (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 14/02/2024
उदघोषणा की तारीख / Date of Pronouncement : 19/02/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 28.11.2023 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2014-15, which in turn arise from the order dated 25.12.2016 passed under section 143(3) of the Income Tax Act, [here in after referred as "Act"] by ITO, Ward-4(1), Jaipur.

2. The assessee has marched this appeal on the following

grounds:-

> *"1. That the learned CIT appeals erred in dismissing the appeal on ground the appeal barred by limitation while the appeal preferred in paper form on 25th Jan. 2017 before the then CIT Appeal, Ajmer, Rajasthan with in prescribed limitation U/S 249(2) of 1.T.Act 30 days from the service after 25th Dec. 2016 of the impugned assessment order (ii) That the learned CIT Appeals erred in reproducing the reason for delay by the appellant like "ISPSE DIXIT without following principle of natural justice (iii) That the learned CIT Appeals erred in applying judicial precedent for dismissing the appeal while the precedents are supporting to the appellant and erred in not following the binding precedent of the jurisdictional Income Tax Appellate Tribunal (Jaipur Bench) Rajasthan.*
>
> 2. Addition U/S 68 of I.T. Act (a) That the learned CIT Appeal erred in dismissing of the appeal without considering facts, evidence and the written argument on record gist of grounds reproduce as under: 1 That the learned Income Tax Officer conducted the whole assessment proceedings on the basis of observation given in survey proceedings against stock broker & conducted by the Investigation wing without having any corroborated evidence in relation to the transactions of the appellant. 2 That the learned Income Tax Officer erred in passing the impugned order on the basis of ostensible facts, presumptions surmises and conjectures against the statutory provisions in favour of the Appellant. 3 That the learned Income Tax Officer erred in applying sec.68 and 69 of I.T. Act on the basis of statements of third persons recorded as conclusive evidence on facts without considering circumstantial benefits of tax interest and penalty to the concerned assessee.
>
> That the assessee craves his right to amend, alter or add any ground before hearing of this appeal."

3. The fact as culled out from the records is that in the case of the assessee he has e-filed his return of income on 31.07.2014 declaring a total income of Rs. 7,79,300/-. Subsequently, the case

was selected for scrutiny under CASS. Consequently, statutory notices u/s 143(2) and 142(1) of the Act were issued asking the assessee to furnished various details. Accordingly, the assessment was completed vide order u/s 143(3) of the Act dated 25.12.2016 assessing the income at Rs. 33,69,440/- after making additions u/s 68 of Rs. 24,20,883/- and u/s 69C of Rs. 1,51,253/- of the Act.

4. Aggrieved from the above order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A). The assessee has filed the physical appeal on 25.01.2017 whereas the same was filed online on 17.12.2018. The ld. CIT(A) considered the appeal filed as belated and the same was disposed off with the following observations :-

> "5. In the case of the appellant, the order u/s. 143(3) levying penalty was passed by the ITO Wd. 4(1), Jaipur on 25.12.2016. The appellant has e-filed the appeal against the order of AO u/s. 143(3) dated 25.12.2016 vide Form No. 35 on 17.12.2018. It is seen that there is a delay in filing of appeal. It has been filed beyond the period of 30 days as stipulated u/s. 249(2) of the Act. There has been a delay of nearly 2 years in filing the appeal. No specific reasons for delay or request for condonation has been filed by the appellant. The appellant in Col. No. 14 of Form No. 35 has also stated that there was a delay in filing of the appeal. The appellant has just made a general statement in Col. No. 15 of Form 35 that due to some technical problem he was unable to file the appeal in time. Hence, on this ground alone, the delay of the appellant is liable to be dismissed.

5.1 During the appellate proceedings, the appellant has filed written submissions on various dates. From the submissions made by the appellant, it is seen that even though there was a delay in filing of appeal, the appellant has not made any request for condonation of delay nor hatt he submitted any reasonable cause for such inordinate delay in filing of appeal, In absence of any bonafide cause or reason cited by the appellant, the appeal is to be dismissed without going into the merits of the case.

5.2 In this regard, the various judgments relied upon are as under:

In the case of Mahabir Prasad Niranjanlalv. Commissioner of Income-tax [1955] 27 ITR 268 (Allahabad), the Hon'ble Allahabad High Court has held as under:-

> When a memorandum of appeal is presented before an AAC, after the expiration of the period fixed, section 30(2) provides that he may admit the appeal if he is satisfied that the appellant had sufficient cause for not presenting it within time if an appeal is presented after the expiration of the period fixed and the AAC is not satisfied that the appellant had sufficient cause for not presenting it within that period, he is bound to reject the appeal The only order that can, therefore, be passed under section 30 is an order condoning or refusing to condone the delay where the appeal is time-barred and the consequential order admitting or refusing to admit the appeal. Section 30 does not provide for the passing of any other order by an AAC. An order passed one way or the other at the time of the presentation of an appeal beyond time must, therefore, be an order under section 30, sub-section (2).
>
> When a memorandum of appeal is presented to an AAC within the period fixed under the Act, section 30 does not lay down how it is to be dealt with. Under section 31(1) a date and the place for hearing has then to be fixed. If, however, the AAC instead of fixing a date and place for the hearing of the appeal rejects the appeal under the mistaken impression that it is time-barred and there is no sufficient cause for condonation of the delay, the question will arise whether the order passed by him can be deemed to be an order-under section 31.
>
> In view, however, of the latest decision of the Supreme Court in CIT v. AR. S. AR. Arunachalam Chettiar[1953] 23 ITR 180, this question can no longer be said to be an open question.

in the instant case the AAC had held that the appeal was barred by limitation and sufficient cause had not been made out for condoning the delay. Whether his decision was right or wrong, in the view taken by their Lordships of the Supreme Court, his order must be held to be an order under section 30(1) and not an order under section 31.

It was, therefore, to be held that the order by the AAC refusing to admit the appeal on the ground that it was not presented within time was an order under section 30(1) of the 1922 Act, and that since it was an order under section 30(1), no appeal lay the Tribunal against that order.

As no appeal lay to the Tribunal under section 33, the Tribunal could not consider the question whether the AAC should or should not have condoned the delay.

Note: The case was decided in favour of the revenue.

In the case of Perfect Circle India Ltd. v. Assistant Commissioner of Income Tax [2020] 120 taxmann.com 262 (Bombay), the Hon'ble Bombay High Court has held as under:-

1. Heard Mr. SM Shah, learned counsel for the appellant: and Mr. N.C. Mohanty, learned standing counsel, revenue for the respondent.

2. This appeal under section 260A of the Income-tax Act, 1961 (briefly the Act hereinafter) has been preferred by the assessee against the order passed by the Income-tax Appellate Tribunal, Mumbai Bench "C", Mumbai (briefly "the Tribunal hereinafter) in Perfect Circle India Ltd. v. ACIT[IT Appeal No. 3403 (Mum.) of 2014, dated 28-2-2017].

3. From the materials on record it is seen that the related Income-tax Appeal No. 3403/Mum/2014 was filed by the appellant against order of the Commissioner of Income-tax (Appeals) dated 1st November, 2004. However, there was delay of 3389 days in filing the appeal for which appellant submitted application for condonation of delay. In support of the application for condonation of delay, appellant also filed an affidavit dated 31st October, 2015 and a further affidavit on 8th November, 2016. However, by the order dated 28th February, 2017 Tribunal declined to condone the delay.

4. Hence, the appeal.

5. Learned counsel for the appellant submits that it was wrong on the part of the Tribunal to say that second affidavit was an afterthought. Infact, the second affidavit explained the first affidavit. That apart, appellant has got a good case on merit. Without examining the merit of appellant's appeal, the same ought not to have been dismissed as being time-barred. In this connection leamed counsel for the appellant has placed before us a compilation of various judgments, out of which he places reliance on Collector, Land Acquisition v. Mst. Katiji [1987] 167 ITR 471 (SC). He therefore submits that the Tribunal ought to have taken into consideration the merit of the appeal and ought to have adopted a liberal approach in considering question of delay.

6. Mr. Mohanty, learned standing counsel, revenue on the other hand supports the order of the Tribunal and has placed reliance on a decision of this court in the case of Cenzer Industries Ltd. v. Income-tax Officer passed in [Notice of Mation Nos. 492 & 493 of 2015, dated 15-1-2016), wherein this court declined to condone delay of 865 days.

7. Submissions made by considered. learned TAX DE Counsel FOMENT the parties have been

8. At the outset, we may advert to the impugned order passed by the Tribunal, relevant portion of which is extracted hereunder-

"11. Thus examining the present case on the touchstone of above, we find that in this case there has been inordinate delay of about 10 years in filing the appeal. Firstly, the assessee had submitted that it was an inadvertent error. In another affidavit assessee had tried to submit that appeal papers were prepared but were not filed without any reason by the Chartered Accountant. The submission is not supported for its veracity or reasoning. Furthermore, there is no rationale in allowing a person to file an appeal after ten years simply because ten years ago also he had thought of filing the appeal. There can be many reasons why a person having thought of filing an appeal may decide not to pursue the matter. Hence, the contents of the second submission cannot be treated but as an afterthought."

9. We do not find any error or infirmity in the view taken by the Tribunal.

10. In so far the decision in Mst. Katiji (supra) is concerned, we find that it was a matter arising out of land acquisition and in the appeal filed by the State of Jammu and Kashmir, there was delay of 4 days. It is in such circumstances that the Supreme Court expressed the view that each days delay is not required to be explained and a pragmatic approach is required to be taken.

11. In the decision of this court in the case of Cenzer Industries Ltd. (supra) reference was made to the above decision of the Supreme court and it was held as under-

'5. It is a settled position that an application for condonation of delay has to be liberally construed, as held by the Apex Court in various cases (see Collector, Land Acquisition v. Mst. Katiji [1987] 167 ITR 471 (SC). However, this liberal construction of the sufficient cause while condoning delay has to be counter balanced by ensuring that the law of limitation which provides for definite consequence on the rights of the parties does not become ineffective. The rule of limitation is provided for general welfare of the society so as to put a period beyond which a party cannot agitate an issue in litigation. The rationale for the same is that once a litigation is decided, the dispute must repose. This is particularly so, if the party aggrieved by the order does not agitate the issue before the appellate forum within the lime provided. The opposite party can then proceed on the basis that the dispute is settled and arrange its affairs on that basis. Thus, if the aggrieved party has not moved the appellate forum within the prescribed time, resulting in other securing an accrued rights, then the party moving an application for condonation of delay, must endeavour to explain the delay and show his bonafide in not having moved within the time prescribed (ie not being diligent). The law assist the vigilant and not the indolent as stated in the Latin Maxim "Vigilantsbusennondormientibusjurasuveniunt.". The reasons for explaining the delay has to be plausible and reasonable so that the Court can exercise its discretion. Moreover, although a party is not be required to explain the reasons for not filing an appeal within the prescribed time the party must explain the delay post period of limitation I.e. from the expiry of the period of limitation

> 12. As is evident, there was delay of 3389 days in filing the related appeal before the Tribunal by the appellant, Tribunal has returned a clear finding that no sufficient cause was shown by the appellant to explain the huge delay. Period of delay is a factor to be considered while considering a delay condonation application; but more importantly it is the explanation for the delay which is relevant.
>
> 13. In such circumstances, we are not inclined to interfere with the impugned order passed by the Tribunal. Appeal is devoid of merit and is accordingly dismissed. However, there shall be no order as to cost.

In the case of Smt. ShakuntlaThukralv. Commissioner of Income-tax [2018] 99 taxmann.com 437 (Punjab & Haryana), the Hon'ble Punjab & Haryana High Court has held as under-

> Ajay Kumar Mittal, J. The appellant-assessee has filed the instant appeal under section 260A of the income-tax Act, 1961 (in short, "the Act") against the order dated April 12, 2016, annexure A-3, passed by the Income-tax Appellate Tribunal, Chandigarh (in short, "the Tribunal") in I. T. A. No. 429/Chd/2013, for the assessment year 2005-06, claiming the following substantial questions of law:
>
> (A) Whether the Income-tax Appellate Tribunal is justified in rejecting the appeal against the order under section 271(1)(c) of the Income-tax Act, on the ground of delay though supported by affidavit of counsel in support of delay ignoring ments of the case and against well settled law that confirmation of order on quantum does not imply confirmation of penalty wherein under similar facts and circumstances, this han ble High Court had condoned the delay in the case of Harish Kumar Chhabra v. CIT (2013) 50 IT Rep. 389 (P &H)
>
> (B) Whether the order of the Income-tax Appellate Tribunal is perverse and deserves to be set aside being devoid of proper appreciation of facts and against well settled law ?"
>
> 2. A few facta relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The appellant-assessee is a resident of Ludhiana. She is engaged in the business of manufacture, purchase and sale of cloth and fabrication. She is a regular assessee under the Act. She filed

her return of income for the assessment year in question declaring total income at Rs. 2,80,161 on October 31, 2005 The Assessing Officer passed an order dated December 27, 2007 under section 143(3) of the Act assessing the income at Rs 58,67,550 The addition was made on the ground of suppression of closing stock amounting to Rs. 28,73,640 and on account of unaccounted job work done. The Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act. The assessee appeared and explained that the imposition of penalty was not maintain able under the law. According to the assessee, on the issue of suppression of closing stock, total stock of Rs. 27,45,000 was lying with her. Besides, she was having stock of other parties worth Rs. 28,73,640. The assessee had taken insurance on the entire stock since the stock was in her custody, and the responsibility for safety lay with her. To take credit limits and loans from the bank, the assessee declared the entire stock as her own. The Assessing Officer summoned record from the bank and after perusing the same, made addition to the income of the assessee. On the second issue, regarding addition of Rs. 5,20,889, on account of unaccounted work done, it was explained to the Assessing Officer that the various items could not be accounted for in the books of account due to clerical error. The Assessing Officer imposed penalty of Rs. 11,13,430 under section 271(1)(c) of the Act, vide order dated September 27, 2010, annexure A-1 as the quantum was confirmed. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income-tax (Appeals) (CIT(A)). Vide order dated June 6, 2011, annexure A-2, the appeal was dismissed confirming the penalty. The appeal before the Tribunal was to be filed within 60 days. It was only in April 2013 when the counsel for the assessee received the order passed by the Tribunal in quantum appeal, it transpired that there was mistake about non-filing of the penalty proceedings under section 271(1)(c) of the Act. Vide order dated April 12, 2016, annexure A-3, the Tribunal dismissed the appeal on the ground that the appeal was highly belated. It was recorded that there had been no diligence on the part of the assessee and that the party guilty of negligence could not ask for condonation of delay of 613 days in filing the appeal. Hence, the instant appeal by the appellant-assessee before this court.

3. We have heard learned counsel for the parties.

4. Admittedly, the assessment order in the present case was passed on December 27, 2007 under section 143(3) of the Act, assessing income at Rs. 58,67,550. The addition was made on the ground of the suppression of closing stock and on account of unaccounted job work done. Penalty proceedings under section 271(1)(c) of the Act were initiated. Penalty of Rs. 11,13,430 was imposed under section 271(1)(c) of the Act on September 27, 2010. The assessee filed an appeal before the Commissioner of Income-tax (Appeals) which was dismissed vide order dated June 6, 2011, annexure A-2. The appeal before the Tribunal was to be filed within a period of 60 days. The same was filed in April 2013. The explanation put forth by the assessee was that she submitted the copy of the order to the learned counsel but the file remained pending with him and it was only in April 2013, when the counsel received the order passed by the Tribunal in quantum appeal that the error was noticed and the counsel realized the mistake about non-filing of the penalty proceedings under section 271(1)(c) of the Act. It was categorically recorded by the Tribunal after examining the entire material that the assessee could not bring on record any evidence or reasons to demonstrate that she was prevented by inevitable circumstances or there was a sufficient cause for not filing the appeal in time which was late by 613 days. Thus, the Tribunal declined to condone the delay in filing the appeal and dismissed the same.

5. This court in VAT Appeal No. 47 of 2012 (HansaflonPlasto Chem. Ltd. v. State of Haryana) decided on July 5, 2012 [2012] 55 VST 361 (Punj. &Har.) following the decisions of the hon'ble Supreme preme Court in Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. [2010] 5 SCC 459 and R. B. Ramlingam v. R. B. Bhuvaneshwari [2009] 1 RCR (Civil) 892 had analyzed the broad principles for condonation of delay under section 5 of the Limitation Act, 1963 as under (page 365 of 55 VST):

"From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time-limit for availing of legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under section 5 of the 1963 Act, the courts are empowered to condone the delay

where a party approaching the court belatedly shows sufficient cause for not availing of the remedy within the prescribed period. The meaning to be assigned to the expression 'sufficient cause occurring in section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases. DEPAR

The hon'ble apex court in Oriental Aroma Chemical Industries Ltd. and R. B. Ramlingam's case (supra) noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/ petitioner is required to establish that in spite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable."

6. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into account totality of events which had taken place in a particular case. No cogent and satisfactory explanation has been furnished by the learned counsel for the appellant-assessee even before this court for inordinately long delay of 613 days in filing the appeal before the Tribunal. The explanation furnished by the assessee as noticed in the earlier part of the order does not satisfy the test of sufficient ground as contemplated under section 5 of the Limitation Act, 1963. Thus, reliance of the learned counsel for the appellant on judgments of this court in Krishan Lal v. CIT ITA No. 279 of 2016, decided on February 9, 2017 and Harish Kumar Chhabra v. CIT ITA No. 38 of 2012, decided on August 28, 2012, is of no help to him.

7. In view of the above, we do not find any ground to differ with the view taken by the Tribunal in dismissing the appeal on the ground of delay. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

> 5.3 In view of the above facts and discussion, the delay of around 2 years in filing of the appeal is not being condoned and the appeal filed by the appellant is dismissed."

5. During the course of hearing, the main emphasis of the ld. AR of the assessee was that the ld. CIT(A) dismissed the appeal of the assessee on the ground that the appeal was not filed online which was beyond the control of the assessee due to technical reason. The appeal was duly registered and filed in the physical form on 25.01.2017 and the same is within time. But though this fact available on record the appeal was decided by the ld. CIT(A) not considering the delay in filling appeal online. Hence, the ld. AR of the assessee prayed that the ld. CIT(A) should be directed to treat the appeal of the assessee as valid appeal. In support of this contention the ld. AR of the assessee relied upon the order of the ITAT Mumbai bench in the case of the AIFTP in ITA no. 7131/Mum/2017.

6. Per contra, the ld. DR supported the order of the ld. CIT(A) and submitted that the assessee is suppose to file the appeal online which is delayed and therefore, she relied upon the order of the lower authority.

7. We have heard both the parties and perused the materials available on record. The crux of the issue is that the assessee has filed the appeal manually but simultaneously not filed the appeal electronically. Hence, Id. CIT(A) treated the manual appeal filed by the assessee as non est and dismissed the same. The Bench noted that similar type of issue was considered by the ITAT Mumbai Bench in the case of **All India Federation of Tax Practitioners vs ITO (E)-1)2_, Mumbai in ITA No. 7134/Mum/2017 vide order dated 4-5-2018** wherein the Bench has restored the matter back to the file of Id. CIT(A) by holding as under:-

> 6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that electronically filing of the appeals was introduced for the first time vide rule 45 of Income Tax Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1-3-2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e. Income Tax Act, 1961.
>
> As per the facts of the present case, the assessment in the above case was completed under section 143(3) of the Income Tax Act 1961. However the assessee has filed appeal before learned Commissioner (Appeals) in paper form as prescribed under the provisions of Income Tax Act 1961 within the prescribed period of limitation. But the same was dismissed by learned Commissioner (Appeals) by holding that assessee had not filed appeal through electronic form, which is mandatory as per Income Tax Rules 1962.
>
> After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of *'State of Punjab v. Shyamalal Murari & Ors.* reported in *AIR 1976 (SC) 1177*' has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been

reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice.

The Hon'ble Apex Court has said in an 'adversarial' system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation.

The Hon'ble Supreme Court in its judgment reported as *AIR 2005 (SC) 3304* in the case of *'Rani Kusum v. Kanchan Devi,'* reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and is in aid of Justice. Any interpretation, which eludes or frustrates the recipient of Justice, is not to be followed.

From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgment of Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has reiterated that if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed or negatived by such technical considerations.

Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in *Appeal ITA No. 6595/Del/16* in case titled *Gurinder Singh Dhillon v. ITO* had restored the matter to the file of learned Commissioner (a) under identical circumstances with a direction do decide appeal afresh on merit, after condoning the delay, if any.

Since in the present case, we find that appeal in the paper form was already with learned Commissioner (Appeals), therefore in that eventuality the learned Commissioner (Appeals) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate Commissioner.

Keeping in view the facts and circumstances as well as the case laws discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of learned Commissioner (Appeals) & allow the present appeal. While seeking the compliance, we direct the assessee to file the appeal electronically within 10 days from the date of receipt of this order. In case, the directions are followed then in that eventuality, the delay in e-filing the appeal shall stand condoned. Learned Commissioner (Appeals) is further directed to consider the appeal filed by the assessee on merits by passing a speaking order. Resultantly, we allow the appeal filed by the assessee.

7. In the net result the appeal filed by the assessee is allowed."

In view of the above decision of ITAT Mumbai Bench in the case of All India Federation of Tax Practitioners vs ITO (supra), assessee is directed to file the appeal electronically before the ld. CIT(A) will be considered as in time and we accordingly condone the delay and restored the matter back to the file of the ld. CIT(A) who will decide the issue on merits in accordance with the law. Thus the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 19/02/2024.

Sd/-	Sd/-
(डा० एस. सीतालक्ष्मी)	(राठौड़ कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judcial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 19/02/2024
*Santosh

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

1. अपीलार्थी / The Appellant- Rajesh Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 22/JPR/2024}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar