

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.2609/Del/2023**

**निर्धारणवर्ष/Assessment Year: 2017-18**

Chhavi Bansal, 70/N, Raghubir Nagar Colony, Ballabhgarh, Faridabad, Ballabgarh, Haryana.	बनाम Vs.	ITO, Ward-1(2), Faridabad.
PAN No. AJLPB8288R		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by	Shri D.C. Garg, CA
राजस्वकीओरसे /Revenue by	Shri Anuj Garg, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	28.12.2023
उद्घोषणाकीतारीख/Pronouncement on	15.03.2024

**आदेश /ORDER**

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-(NFAC), Delhi dated 29.08.2023 for the AY 2017-18 in sustaining the penalty levied u/s 271AAC(1) of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that the Ld.CIT(A), NFAC dismissed the appeal of the assessee without condoning the delay and ignoring the affidavit filed by the assessee. Ld. Counsel submits that the submissions of the assessee dated 26.06.2023 were not considered by the Ld.CIT(A) while disposing of the appeal. The Ld. Counsel further submits that the Assessee filed

her ITR on 17-02-2028 at an income of Rs.4,39,900/-. The Assessment was completed u/s 144 vide order dated 29-12-2029 at an income of Rs.48,08,980/-. The AO also passed penalty order u/s 271AAC(1) *ex-parte* on 01-02-2022. None of the notices for assessment as well as penalty proceedings was served on the Assessee. The Assessee furnished duly sworn in affidavit affirming non-service of any notice/order. (Kindly refer page 2 of the Paper Book). The Assessee filed appeals against assessment order as well as against penalty order 'on 02-06-2022 along with application for condonation of delay, as soon as she downloaded assessment and penalty orders from the portal. In response to the notice u/s 250 dated 19-06-2023 issued by the NFAC, the Assessee furnished her reply on 26-06-2023 requesting to keep the appellate proceedings in abeyance till the disposal of quantum appeal. (Kindly refer page 4 of the Paper Book) The Ld. NFAC dismissed the appeal vide order dated 29-08-2023 by rejecting application for condonation of delay without referring to the submission dated 26-06-2023 of the Appellant. Delay in filing the appeal is caused only due to non service of any notice or order on the Appellant. Hence, there was reasonable and sufficient cause in not filing the appeal in time. The Applicant furnished duly sworn affidavit along with application for

condonation of delay. As held by Hon'ble Supreme Court in Mehta Parekh & Co. Vs CIT [30 ITR 181] that averments of duly sworn in affidavit are to be accepted as correct unless the same are rebutted by evidence.

3. On hearing both the parties and perusing the orders of the authorities below and the submissions of the ld. Counsel for the assessee it is observed that the Ld.CIT(A) dismissed the appeal without condoning the delay observing that the assessee has not produced anything on record to substantiate any reasonable cause for delay in filing the appeal. It is the submission of the Ld. Counsel that the affidavit and the submissions of the assessee were not considered by the Ld.CIT(A) while disposing of the appeal.

4. Considering the totality of facts and circumstances of the case and in the interest of justice, this appeal is restored to the file of the Ld.CIT(A) who shall decide afresh considering the affidavit and the submissions of the assessee in accordance with law.

5. In the result, this appeal is allowed for statistical purpose.

Order pronounced in the open court on 15/03/2024

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 15.03.2024

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**