

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3848/M/2023  
Assessment Year: 2014-15**

Shri Lalitkumar Mohanlalji Sakhla, 2 <sup>nd</sup> Floor, Abhyankar Tower, M.G. Road, Nashik, Maharashtra – 422001 <b>PAN: BGEPS9156C</b>	Vs.	ACIT, Circle -31(2), Pratyakshar Bhavan, Bandra (E), Mumbai – 400 051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Sanket Joshi, A.R.  
Revenue by : Shri Manish Ajudiya, D.R.

Date of Hearing : 04 . 03 . 2024  
Date of Pronouncement : 19 . 03 . 2024

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

At the very outset it is brought to the notice of the Bench by the Ld. A.R. for the appellant, Shri Lalitkumar Mohanlalji Sakhla (hereinafter referred to as 'the assessee') that the present appeal is filed with a delay of 89 days and sought to condone the same by moving an application supported with an affidavit on the grounds inter-alia that the impugned order passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals),

Delhi] (hereinafter referred to as CIT(A)] was served upon the through email which remained unnoticed by the assessee who is a senior citizen; that the delay in filing the appeal was neither willful nor intentional.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the fact that due to introduction of National Faceless Appeal proceedings which are entirely online, many assesseees who are not tech savvy are suffering due to lack of communication on account of their own fault or due to the fault of the system and that the assessee in this case is a senior citizen who has categorically stated that he could not notice the order sent through email, we find sufficient cause to condone the delay particularly in the facts and circumstances of the case that the Ld. CIT(A) has passed ex-parte order for want of prosecution by the assessee and an opportunity of being heard is required to be given to the assessee to decide the issue once for all. So the delay of 89 days in filing the present appeal is hereby condoned in view of the law laid down by the Honourable Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) wherein it is held that "it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice

being done because of a non deliberate delay,” and heard on merits today itself by the Bench.

4. At the very outset it is brought to the notice of the Bench by the Ld. A.R. for the assessee that the Ld. CIT(A) has passed the impugned order ex-parte for want of prosecution by the assessee. We have noticed in para 4 of the impugned order that three notices are stated to be given to the assessee but no response has been received and consequently the Assessing Officer (AO) proceeded to dismiss the appeal for want of prosecution without touching the merits of this case.

5. We are of the considered view that for argument sake even if it is assumed that the assessee has been served the Ld. CIT(A) was required to decide the appeal on merits which he has not decided. To decide the issue once for all the impugned order is liable to be set aside to provide adequate opportunity of being heard to the assessee. Consequently the impugned order passed by the Ld. CIT(A) is set aside to be decided afresh after providing adequate opportunity of being heard to the assessee.

6. Resultantly, the appeal filed by the assessee is hereby allowed for statistical purposes.

**Order pronounced in the open court on 19.03.2024.**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 19.03.2024.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.