

**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.3278/Del/2023

निर्धारणवर्ष/Assessment Year: 2016-17

Wisteria Advertisement Pvt. Ltd., 35, 1 st Floor, Jangpura Extension, New Delhi. PAN No.AABCW4326P	बनाम Vs.	ITO, Ward-2(3), Faridabad.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by	Shri Shyam Sunder, Adv.
राजस्वकीओरसे / Revenue by	Shri Anuj Garg, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	28.12.2023
उद्घोषणाकीतारीख/ Pronouncement on	19.03.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals) - (NFAC), Delhi dated 31.10.2023 for the AY 2016-17 in sustaining the penalty levied u/s 271(1)(b) of the Act.

2. The Ld. Counsel for the assessee, at the outset, submits that the Ld.CIT(A) dismissed the appeal of the assessee without condoning the delay.

3. Ld. Counsel for the assessee further filed a brief synopsis stating as under: -

“1. The aforesaid appeal was filed against the levy of penalty of Rs.10,000/- u/s 271(1)(b) of the Income Tax Act, 1961 for the alleged non-compliance of notice issued u/s 142(1) of the Act dated 05.09.2018. It is submitted that against the penalty order passed u/s 271(1)(b) of the Act dated 31.03.2019 an appeal was filed before the Ld. CIT(A) on 24.02.2022 and submissions on merit of case was filed during the course of appellate proceeding before the Ld. CIT(A). However, Ld. CIT(A) instead of deciding the appeal of assessee on merits of the case, dismissed the appeal on account of delay in filing without providing any reasonable opportunity of being heard during the course of appellate proceeding. It is necessary to state that appeal was decided within a short span of almost three weeks from the first date of hearing.

2. It is submitted that 2018/2019 being the transitional year from physical assessment to E proceeding and due to introduction of the E proceeding option on the Income Tax Portal the notices and orders which were used be served physically on the registered address of the assessee have been stopped and now notices and order are served through the electronic means only like serving of copy on the E Mail or uploading on the Income Tax Department website under the E proceeding section. Due to this transitional phase no order and notices were served physically during that time and therefore this error has been committed.

3. It may be appreciated that as and when it has come to notice, hearing was attended and even assessment was made u/s 143(3) of the Act and replies were filed by the AR of the assessee. Due to illness of the AR of the assessee this order was not looked into and so no action has been taken. The assessee came to know that appeal was not filed during the covid pandemic but immediately assessee filed appeal after engaging the counsel. Hence delay in filing appeal was due to following:

- a) New E filing system.*
- b) Illness of the AR.*

c) Covid pandemic.

4. It may be appreciated that the assessee cannot be expected to know about the technicalities of tax compliances for which he was dependent on a Chartered Accountant who was handling the same and assessee therefore, cannot be held to be liable for the bonafide mistake of the professional due to illness on account of highly diabetic condition as well as covid pandemic.

5. It is further necessary to submit during the year from 2020 to 2022. the whole world has seen the major waves of Covid 19 and therefore, in order to save the litigants from the hardship faced during the time of pandemic in filing appeals/ petitions/ suits and applications Hon'ble Supreme Court vide order dated 10.01.2022 passed in **In Re: Cognizance for Extension of Limitation** has extended the period of limitation in all proceedings before courts/tribunals w.e.f. 15.03.2020 to 2.8.02.2022. Therefore, in the present appeal the period from 15.03.2020 to 24.02.2022 automatically stands excluded and there is a delay of 320 days if calculated from after 30 days of the date of order i.e., from 30.04.2019 to 15.03.2020.

6. It is submitted that after excluding the period of limitation for filing of appeal as provided in the **In Re: Cognizance for Extension of Limitation** due to the covid pandemic there is a total delay of 320 days in filing of appeal before the Ld. CIT(A) against the aforementioned penalty order.

7. It is therefore submitted that, there was a sufficient reason which prevented the assessee to file an appeal within the due time frame as provided under the Act and appeal of assessee should not be denied only on the basis of technicalities or on account of bonafide mistake on part of the accountant who was earlier handling the case of the assessee.

8. Therefore, it is humbly prayed that the aforesaid appeal may be decided on merits or in the alternate may be remanded back to the Ld. CIT(A) with direction to decide the appeal on merits of the case.”

4. On a query from the Bench as to whether the appeal can be restored to the file of the Ld.CIT(A) for fresh consideration, the DR has expressed no objection.
5. Considering the submissions of the rival parties, this appeal is restored to the file of the Ld.CIT(A) for fresh adjudication in accordance with law after providing adequate opportunity of being heard to the assessee.
6. In the result, appeal is allowed for statistical purpose.

Order pronounced in the open court on 19/03/2024

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

Dated: 19.03.2024

**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