

**आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.57/CTK/2024

(निर्धारण वर्ष / Assessment Year :2017-2018)

Shristi, B-205, Krishna Towers, Nayapalli, Bhubaneswar-751012	Vs	ITO, Ward(Exemption), Bhubaneswar
PAN No. : <b>AACTS 2023 B</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Tarun Agarwalla, CA
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	22/04/2024
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	22/04/2024

**आदेश / O R D E R**

This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 19.12.2023, passed in DIN & Order No.ITBA/APL/S/250/2023-24/1055597652 (1) for the assessment year 2017-2018.

2. It was submitted by the Id. AR that the issue in the appeal was against the action of the AO in denying to consider the Form No.9A filed belatedly. It was the submission that before the Id. CIT(A), notice of hearing had not been noticed by the assessee. It was the prayer that in view of the decision of the Hon'ble Supreme Court in the case of Nagpur Hotel Owners Association, reported in 247 ITR 201 (SC), wherein it has been held that once the AO has the information before he completes the assessment, the same should be considered for the purpose of assessment and the same should not be rejected just because there is a delay in filing of the same, it was the submission that the issue may be restored to the file of AO for considering the Form 9A which is admittedly

being filed belatedly and for which a condonation petition has been filed and the reasons for the delay is also covered by the circular issued by the CBDT.

3. In reply, Id. Sr. DR submitted that if the issue is being restored to the file of AO, it should be subject to the condition that the AO shall await the decision of the Id. CIT(E) in regard to the condonation of delay petition filed by the assessee in respect of the delay in filing of Form 9A.

4. I have considered the rival submissions. It is found from the fact that the assessee has filed Form 9A belatedly. It has also categorically admitted by the assessee that Form 9A has been filed before the completion of assessment and condonation of delay petition has also been filed. It was also submitted by the Id. AR that the condonation of delay falls within the criterion prescribed by the CBDT in its circular. This being so, considering the fair claim as raised by the Id. Sr. DR, the issue in this appeal is restored to the file of AO for readjudication after the condonation of delay petition is disposed off by the Id. CIT(E).

5. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 22/04/2024.

**Sd/-**

(जार्ज माथन)

**(GEORGE MATHAN)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

**कटक** Cuttack; दिनांक Dated 22/04/2024

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अग्रेषित/Cop.y of the Order forwarded to :**

1. अपीलार्थी / The Appellant-  
Shristi,  
B-205, Krishna Towers,  
Nayapalli, Bhubaneswar-751012
2. प्रत्यर्थी / The Respondent-  
I ITO, Ward(Exemption), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,  
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack