

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 1134/Kol/2023**  
**Assessment Year: 2017-18**

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| <b>Sri Biswajit Bera</b><br>C/o. M/s. Salarpuria Jajodia & Co.<br>7, C.R. Avenue<br>3rd Floor<br>Kolkata - 700072<br><b>[PAN : BLWPB4251N]</b> | Vs | <b>Income Tax Officer, Ward - 27(3),<br/>Haldia</b> |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|--------------------------|

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|---------------|---|
| Assessee by : | Shri Siddharth Jhajharia, FCA           |
| Revenue by :  | Shri Monalisha Pal Mukherjee, JCIT, D/R |

सुनवाई की तारीख/Date of Hearing : 18/04/2024  
घोषणा की तारीख /Date of Pronouncement: 08/05/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)") dt. 21/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

2. The Registry has pointed out that there is a delay of 152 days in filing of this appeal. We find that the assessee has placed an affidavit dated 19/01/2024, stating therein the reasons for the delay in filing of the appeal before this Tribunal with a prayer to condone the delay. The reasons stated in the affidavit are reproduced below:-

*"4. That the said delay of 151 days in filing the appeal by the appellant before the Hon'ble Income Tax Appellate Tribunal, Kolkata, is not intentional but the said delay is due to the following reasons and circumstances: -*

a) That the wife of the appellant had been suffering from serious mental depression for not having a child even after few years of marriage and therefore she was under treatment of a specialist doctor since 01.11.2018.

b) That because of the serious mental condition of the wife, the appellant was under tremendous mental stress and strain and he could not leave home keeping his wife alone for a long period. As a result, the appellant could not attend/pursue his income tax assessment and appeal matters for the assessment year 2017-18 till the end of September, 2023.

c) That after the birth of a baby on 16.07.2023, the mental condition of the wife of the appellant started improving and thereafter from the middle of October, 2023, the appellant could find time for pursuing his income tax matters.

d) That upon improvement of the mental condition of his wife, the appellant visited his tax consultant on 15<sup>th</sup> October, 2023 in Kolkata to get the Grounds of Appeal drafted for filing the appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata against the impugned order dated 21.03.2023 passed by the CIT(Appeals), NFAC, Delhi, for the assessment year 2017-18

e) That the Grounds of Appeal and the papers required for filing the appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata, were finalized and made ready on 19.10.2023 and the required fees for filing the appeal was paid on 19.10.2023

f) That on the very same date, i.e. on 19.10.2023, the appellant filed die Appeal before the Hon'ble Income Tax, Appellate Tribunal, Kolkata, against the sail impugned order dated 21.03.2023 passed by the CIT(Appeals), NFAC, Delhi."

2.1. On perusal of the above reasons stated in the affidavit, we find that the delay on the part of the assessee was on account of *bona fide* cause and the same was not intentional. Therefore, we deem it fit to condone the delay and admit this appeal for hearing.

3. The Id. Counsel for the assessee, at the outset, submitted that both the lower authorities have passed *ex-parte* orders, without granting the assessee sufficient opportunity of being heard and that

the assessee has a fair chance of succeeding on merits, if given an opportunity. He prayed for the matter to be restored to the file of the ld. Assessing Officer for fresh assessment on the merits of the case.

On the other hand, the ld. D/R submitted that the matter may be restored to the file of the ld. CIT(A) where the assessee will get a fair opportunity to furnish all the details.

4. We have heard rival submissions and perused the material placed before us. Admittedly the orders of both the lower authorities are *ex-parte*. However, on considering the contents appearing in the affidavit filed in support of condonation of delay in filing of the appeal, we notice that during the period 2018 to 2023, the assessee's wife was suffering from mental depression and which prevented the assessee from carrying out regular day to day activities. We also notice that case of the assessee was selected for scrutiny on account of cash deposit. Assessee has also not filed any return of income. However, during the assessment proceedings before the ld. Assessing Officer, it was stated by the assessee that during FY 2016-17, the assessee was working as a bank correspondent under United Bank of India, Narghat Branch. He also stated in the submission that he is only earning income from commission and the alleged cash deposit was made in his bank correspondent account from various customers of United Bank of India. We notice that after this submission, the assessee failed to file any other details. Even before the ld. CIT(A), the assessee did not file any details or documents in support of its grounds and the finding of the ld. CIT(A) is very general in nature and he has not considered the submissions filed by the assessee before the ld.

Assessing Officer and the Id. CIT(A) has merely confirmed the finding of the Id. Assessing Officer. Under these given facts and circumstances, in the interest of justice and being fair to both the parties, we are inclined to restore all the issues on merits to the file of the Id. Assessing Officer for *de-novo* adjudication in accordance with law after granting the assessee sufficient opportunity of being heard. The assessee is directed to produce all necessary documents/evidence in support of its claim. The Id. Assessing Officer shall consider the same and frame the assessment afresh.

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

**Order pronounced in the Court on 8<sup>th</sup> May, 2024 at Kolkata.**

*Sd/-*

**(PRADIP KUMAR CHOUBEY)**  
**JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)**  
**ACCOUNTANT MEMBER**

Kolkata, Dated 08/05/2024

*30/5/24*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata