

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4274/MUM/2023  
(Assessment Year: 2009-10)**

**Gindo Sajjan Yadav,**  
1302, Maruti Mount View,  
Sector 8B, CBD Belapur,  
Navi Mumbai - 400614  
[PAN: ABFPY9258A]

..... **Appellant**

**Income Tax Officer,  
12(2)(4), Mumbai,**  
Aaykar Bhawan, M.K. Road,  
Mumbai - 400020

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Pramod Kumar Parida  
Miss Kiran Vadher  
For the Respondent/Department : Shri Paresh Deshpande

**Date**

Conclusion of hearing : 07.05.2024  
Pronouncement of order : 16.05.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 22/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order, dated 07/03/2024 passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Assessee has raised the following grounds of appeal:
  - "1. On the facts and circumstances of the case and in law, the

*Hon'ble CIT(A) has erred in confirming the order of learned assessing officer imposing penalty of Rs. 11,10,216 under section 271(1)(c) of the Income tax Act, 1961 without appreciating the fact that Hon'ble Income Tax Appellate Tribunal vide I.T.A. No. 6507/M/2013 dated 15.02.2016 has remanded issue of denial of exemption of Rs. 35,92,932 under section 54F to file of CIT(A) for fresh adjudication and passing a speaking order after affording a reasonable opportunity of being heard to the assessee. CIT (A) has not yet heard.*

2. *The learned Commissioner of Income Tax (Appeals) has failed to issue physical notice and passed the order on the basis of notices issued through Email."*
3. The relevant facts in brief are that penalty of INR 11,10,216/- was levied upon the Appellant under Section 271(1)(c) of the Act by Penalty Order, dated 07/03/2014. The Appellant is aggrieved by the fact that vide order, dated 22/05/2023, the CIT(A) has dismissed the appeal preferred by the Appellant against the said Penalty Order.
4. Since there was a delay of 129 days in filing the appeal, the Ld. Authorised Representative for the Appellant was asked to explain the reason for the delay. In response, the Ld. Authorised Representative for the Appellant, placing reliance upon the affidavit filed by the Appellant submitted that the Appellant is a house wife. After the retirement of her husband, she shifted to their native place in Haryana. The tax professional representing the Appellant before the CIT(A) had, vide letter dated 05/07/2015, provided the address of the aforesaid tax professional for the purpose of service of notice on the Appellant. However, the notices send by the CIT(A) were sent on the E-mail ID of the Chartered Accountant looking after the filing of returns of income of the Appellant. Since no notice of hearing were received by the Appellant or the tax professional representing her in the appellate proceedings before CIT(A), the Appellant failed to

appear before CIT(A) and the appeal was dismissed by the CIT(A) on that ground without examining the stand taken by the Appellant. The Appellant got to know about passing of the order, dated 05/07/2015, passed by the CIT(A) dismissing the appeal only when the refund for the Assessment Year 2023-24 was set off against the outstanding demand. This resulted in a delay of 129 days in filing the appeal.

5. In response, the Ld. Departmental Representative submitted that despite several opportunities having been granted, the Appellant did not comply with the notices of hearing and failed to utilize the opportunity to present her case before the CIT(A). Therefore, CIT(A) was justified in confirming the penalty. The fact that the Appellant has been negligent is clear from the fact that even the appeal before the Tribunal has been filed after a delay of 129 days.
6. We have considered the rival submissions and perused the material on record. On perusal of Form-35, being Memorandum of Appeal before Commissioner of Income Tax (Appeals), we find that the appeal against the Penalty Order, dated 07/03/2024 was filed in physical form. Further, we note that the Appellant has placed upon record letter dated 05/07/2016 filed by Sumer Surana & Co., Chartered Accountants before Commissioner of Income Tax (Appeals)-28 intimating change of address. The aforesaid letter corroborates the submissions made on behalf of the Appellant that the Appellant did not have knowledge of either the notices issued before hearing or the fact that the order has been passed by the CIT(A). The Hon'ble Supreme Court, in the case of Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC) has emphasized that substantial justice should prevail over technical considerations. The requirement that every day's delay must be explained does not mean that a pedantic

approach should be taken. The aforesaid doctrine must be applied in a rational common sense and in pragmatic manner, and more so in circumstances where a litigant does not stand to benefit by lodging the appeal late as is the case before us. Accordingly, delay of 129 days in filing the present appeal is condoned.

7. We note that the CIT(A) had dismissed the appeal on account of failure of the Appellant to pursue the appeal holding that the Appellant had failed to place on record any documents or submissions to substantiate why penalty should not have been imposed by the Assessing Officer. Given the above said facts and circumstances of the present case, we deem it appropriate to set aside the order dated 22/05/2023, passed by the CIT(A) with the directions to CIT(A) to decide the appeal afresh as per law after granting Appellant a reasonable opportunity of being heard. In the present appeal filed before the Tribunal the Appellant has provided her email address as 'sajjanyadav@hotmail.com'. The Appellant is directed to place on record of the CIT(A) her present address and email address. The Appellant is also directed to keep a track of the appellate proceedings. In terms of the aforesaid, Ground No. 1 & 2 raised by the Appellant are allowed for statistical purposes.
8. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 16.05.2024.

**Sd/-**  
**(Narendra Kumar Billaiya)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 16.05.2024  
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai