

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI GIRISH AGRAWAL, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 4397/MUM/2023
(Assessment Year : 2010-11)**

Dharmendra Harishchandra Mehta Room no. 16, 1 st Floor, Nityanand Matruchaya Chawl, Chandarwalal Samvari Bazar, Malad East 400064	Vs.	Income Tax Officer ward 30(1)(3) Room no. 115, 1 st Floor, Matru Mandir, Tardeo, Mumbai 400007.
PAN/GIR No. ADVPM4868J		
(Appellant)	..	(Respondent)

Assessee by	Shri. Jayant R. Bhatt
Revenue by	Smt. Mahita Nair (SR.DR.)
Date of Hearing	07/05/2024
Date of Pronouncement	31/05/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 26.10.2023 passed by the Ld. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred as "Act"] for the

Assessment year [A.Y.] 2010–11, wherein learned CIT(A) has dismissed the assessee's appeal for non prosecution and being filed beyond limitation period.

2. The brief facts related to the appeal state that the assessee is an individual and engaged in the business of labour work of Imitation Jewellery. He filed his return of income on 31.03.2011 declaring total income of Rs. 1,82,700/-. Subsequently information was received from the Dy.DIT(Inv.) Unit 6(3), Mumbai that Shri Samir Karia and Shri Ramesh Soni had admitted in their statements recorded on oath that they had provided the accommodation entries through cheques issued in lieu of cash to various beneficiaries. The details obtained from Shri Samir Karia, Shri Ramesh Soni and also from the Abhyudaya Co-operative Bank revealed that the assessee, Shri Dharmendra H Mehta was one of the beneficiaries, who had taken accommodation entries aggregating to Rs.18,33,760/- through cheques from Shri Samir Karia during the previous year relevant to AY 2010-11. On the basis of this information, notice dated 17.03.2017 u/s. 148 of the Act was issued to the assessee and after recording reasons, the assessment for A.Y.2010–11 was reopened. During the course of assessment proceedings, the

assessee responded to the notices issued u/s. 143(2) and 142(1) of the Act. The assessee provided the details but P&L A/c, Balance Sheet, details of party wise sales etc, hence an accommodation entry amounting to Rs. 18,33,760 was added in the total income of the assessee as an unexplained credit u/s. 68 of the Act. Aggrieved from the assessment order, assessee filed an appeal before learned CIT (A), resulting in dismissal of appeal on aforesaid grounds, hence this appeal.

3. The appellant assessee has approached this tribunal on the following grounds:

“1. Under the facts and circumstances of the case and in law, order passed by CIT Appeal, being bad in law on various counts, the same should be set aside.

2. Under the facts and circumstances of the case and in law, the learned CIT APPEAL has erred in dismissing the appeal ex party in limine and that the same should be set aside.

3. Under the facts and circumstances of the case and in law, the learned CIT Appeal has erred in confirming the order of the assessing officer making an addition of Rs 18,33,760/-”

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.

5. We have perused the records and heard learned representative for both the parties.

6. At the very outset, it has been submitted by the learned representative for the assessee that learned CIT(A) has passed impugned order as ex-parte in violation of the principles of

natural justice, without affording sufficient opportunity to the assessee. Further submitted that learned CIT(A), did not give any heed to the assessee's prayer for grant of time as the person looking after the matter underwent retinal surgery. Appellant assessee has prayed to set aside the impugned order.

7. Learned DR has submitted that the assessee has neither submitted the required details before the AO nor pursued his appeal before learned CIT(A). She supported the impugned order.
8. Ld. CIT(A) dismissed the appeal of the assessee by observing in para 4.1, that the appeal filed is late by 9 days for which assessee has not filed any condonation application. In para 4.2, while giving his finding, the appeal has been dismissed as non-admissible, owing to late filing of appeal and non-filing of condonation of delay application.
9. Considering the submissions made before us, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of ld. CIT(A) for denovo meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We direct the assessee to place on record before the ld. CIT(A), an application seeking condonation of

delay of nine days which may be disposed of by the ld. CIT(A) in accordance with the provisions of law. We further direct the assessee to be diligent and cooperative in attending the hearings and make his submissions for expeditious and effective disposal of the appeal. He should not seek adjournments unless warranted by compelling reasons.

10. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order pronounced on 31.05.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER
Mumbai; Dated 31/05/2024
Anandi Nambi, *Steno*

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai