

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.140/M/2024
Assessment Year: 2013-14**

Shri Jugalkishor Dhanpatrai Gupta, 44 Kapadia Chambers, Devji Ratanshi Marg Carnac Bunder, Mumbai – 400 009 PAN: AAVPG1872B	Vs.	Ward 27(1)(5), IT-Office, Vashi Railway Station Building, Navi Mumbai, Maharashtra- 400 703
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rakesh Joshi, A.R.
Revenue by : Ms. Rajeshwari Menon, Sr. DR.

Date of Hearing : 02 . 05 . 2024
Date of Pronouncement : 27.05. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 10.11.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. In the instant case the assessee, against the assessment order dated 07.03.2022 passed under section 147 r.w.s. 144 & 144B of the Act and the addition of Rs.45,75,000/- on account of advancing the cash loan as un-explained money, preferred the first appeal before the Ld. Commissioner, however, with a request for condonation of delay of 180 days in filing of first appeal, on the reasons mentioned below:

“2. That the assessment under section 147 r.w.s 144B of the Income-tax Act, 1961 ('the Act') was completed on 07.03.2022 assessing the total income at Rs.57,09,330/-. During the assessment proceedings, the Learned Assessing Officer ('Ld. AO') disallowed the amount of Rs.45,75,000/- u/s 69A of the Income Tax Act, 1961 ('The Act').

3. That the e-mail id registered on the Income tax portal on which all the notices were issued belongs to my daughter. However she has been In a traumatic state of mind since the death of her first husband on 02.09.2019 and remarriage in 16.02.2021 and death of her second husband on 22.03.2022. Copy of death certificates is attached herewith as Annexure-1 and Annexure-2 respectively.

4. That I have been suffering from intracranial bleeding since 2017. Since then I am home bound and suffering from advanced dementia. The medical certificate for the same has been attached herewith as Annexure-3. As a result of which I am unable to speak, sign or remember anything.

5. That I was unaware of the proceedings as well as the order passed by the Ld. AO. dated 7/3 /2022 and the same came to the knowledge of my authorized representative on visiting the Income tax e-filing portal for filing my Income tax return on 28/7 /2022 after which it came to my knowledge.

6. *That aggrieved by the assessment order, I am filing an appeal before Hon'ble Commissioner of Income-Tax (Appeals) ("CIT(A)") on 3/10/2022 thus causing a delay of 180 days.*

7. *Since the successful filing of Form 35 requires OTP (One Time Password) validation, I was unable to complete the process as my mobile phone was unavailable as a result of which the Form 35 could not be validated. Hence, I had to file my Form 35 using Digital Signature Certificate (DSC) which took substantial amount of time because I was not able to do video verification on my own.*

8. *That I am not a habitual defaulter and because of the above stated reasons I have preferred an appeal against the order of the Ld.AO.*

9. *That, I have no intention to jeopardize the interest of revenue by causing delay in filing appeal before Hon'ble CIT(A).*

10. *That I submit this application in order to bring on record, facts of the above case. It is also to bring on record that the delay has been caused due to reasonable cause.*

3. Though the Ld. Commissioner considered the prayer for condonation of delay, however not get impressed and ultimately dismissed the appeal of the assessee in limine under the provisions of section 249(3) r.w.s. 250 of the Act by observing and holding "*that the assessee's application for condonation of delay is not accompanied by any application/evidence to the stated reasons, hence not justified and in this case the assessee has not shown any sufficient cause*".

4. Having heard the parties and perusing the material available on record, we observe that from the affidavit dated

18.11.2022 filed by the assessee before the Ld. Commissioner, it appears that the Assessee has submitted a medical certificate to the effect that he was suffering from advanced dementia. The assessee also demonstrated that he was unable to speak, sign or remember anything due to the aforesaid disease and is not a habitual defaulter and also had no intention to jeopardize the interest of the Revenue by causing delay in filing the appeal before the Ld. Commissioner CIT(A) and the delay in fact has been caused due to reasonable cause.

There is nothing available on record or even otherwise not brought by the Revenue Department to contradict such claim of the assessee. We also do not find any material and/or reason to decide contrary, hence by considering the reasons stated by the assessee as genuine, bonafide and reasonable, deem it appropriate to condone the delay of 180 days. Consequently, the delay occurred in filling first appeal before the Ld. Commissioner is condoned and the case is remanded to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate its case.

4.1 The assessee is also directed to cooperate with the appellate proceedings before the Ld. Commissioner and file the relevant reply/submission/ documents which would be essential/required for proper adjudication of the appeal of the assessee on merit by the Ld. Commissioner. We clarify that in case of further default, the assessee shall not be entitled for any leniency.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 27.05.2024.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT,
Mumbai.