

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 203/MUM/2024
(Assessment Year: 2015-16)**

Chhothmal Ganesharam Suthar,
Gala No. 9/10 H No. 4/2,
Ruby Industrial Estate S No. 62,
Naman Industrial Estate,
Sativali Vasai (East), Mumbai 401208
[PAN: AXJPS0838A]

..... **Appellant**

**Commissioner of Income Tax
(Appeals), Mumbai**
55 B Waman Tukaram Patil Marg,
Govandi, Opp Amar Cinema
Near Atar Garage, Mumbai

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Manglamber R. Dwivedi
Shri Chandra Prakash Pandey

For the Respondent/Department : Shri H.M Bhatt

Date

Conclusion of hearing : 22.05.2024
Pronouncement of order : 30.05.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 03/08/2023, 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 2015-16, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 26/12/2017, passed under Section 143(3) of the

Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised the following grounds of appeal:

"1. *On the facts and circumstances of the case the appellant submits that he is into business of interior decorator and civil contractor under the firm name and style of M/s B.I projects On the facts and circumstances of the case and in law AO has done injustice to appellant by disallowing Rs.1,50,97,896/-without giving proper opportunity of being heard. The appellant has submits books of account to AO for cross examination of order but AO had denied.*"

3. The relevant facts in brief are that the assessment under Section 143(3) of the Act was framed on the Appellant vide Assessment Order, dated 26/12/2017. Being aggrieved, the Appellant preferred appeal before CIT(A) which was dismissed vide order, dated 03/08/2023, in view of the fact that the Appellant had failed to file any response/reply to the notice of hearing dated 13/01/2021, 28/04/2023 and 15/07/2023 issued by the CIT(A). The CIT(A) also noted that despite enablement of communication window no response was received from the Appellant. Being aggrieved by the above order of dismissal passed by the CIT(A), the Appellant has preferred the present appeal. As per the registry, there was a delay of 104 days in filing the present appeal.

4. The Ld. Authorised Representative for the Appellant appearing before us submitted that the delay in filing the present appeal be condoned. It was submitted that the order passed by the CIT(A) was sent to the old office address provided in form 35 which was subsequently vacated by the Appellant. Further, the e-mail ID specified in Form No. 35 could not be accessed by the Appellant. The Appellant did not have sufficient staff and

professional support at the relevant time. It was also submitted that at the relevant time, the Appellant was mentally disturbed. The Appellant got to know of the order, dated 03/08/2023, having been passed by the CIT(A) subsequently, and took steps to file the present appeal before the Tribunal. This resulted in delay in filing the present appeal before the Tribunal.

5. In response, the Learned Departmental Representative submitted that the Appellant has been non-cooperative during the assessment as well as appellate proceedings. The additions/disallowances disputed by the Appellant before CIT(A) were made as the Appellant had failed to submit any corroborative documents. The Assessee also failed to appeal before the CIT(A) and therefore, the CIT(A) was justified in dismissing the appeal.
6. In rejoinder, the Learned Authorized Representative submitted that the Appellant was working as a civil contractor and had projects outside Mumbai and therefore, could not gather the material in time for filing before the Assessing Officer. The Appellant has now been able to gather the relevant material to support the disputed claims.
7. We have considered the rival submission and perused the material on record.
8. We note that the Appellant was engaged in civil construction projects outside Maharashtra. It has been stated that the Appellant was not keeping good health and did not have supporting staff at the relevant time. Therefore, the Appellant was not able to pursue the appellate proceedings before the CIT(A) and failed to make representation. Further, the notice of hearing issued by the CIT(A) could not be served upon the

Appellant as the Appellant had vacated the office. It has been stated by the Learned Authorized Representative for the Appellant that the Appellant has now been able to obtain/collate the documents/details to support the claims for deduction which were not available during the assessment proceedings and is, therefore, seeking another opportunity to satisfy the CIT(A). In our view that the Appellant has been able to show sufficient cause for not presenting the appeal before the Tribunal in time specified in Section 253(3) of the Act as well as for not entering appearance before the CIT(A). Therefore, delay of 104 days in filing the appeal is condoned keeping in view the judgment of the Hon'ble Supreme Court in the case of Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC). Further, keeping in view the overall facts and circumstances of the case, we deem it appropriate to grant Appellant another opportunity make out a case before the CIT(A). Accordingly, the order dated 03/08/2023, passed by the CIT(A) is set aside and appeal filed by the Appellant before CIT(A) is restored to its original number with the directions to the CIT(A) to adjudicate the grounds raised in appeal afresh as per law after granting the Appellant reasonable opportunity of being heard. The Appellant is directed to file all relevant documents and details before the CIT(A) along with application for admission of additional evidence, in case so advised. The CIT(A) is directed to consider the same as per law. The Appellant is also directed to be vigilant and keep track of the appellate proceeding through ITBA portal and take steps to update present address and active e-mail address in appeal before the CIT(A) for communication. In terms of the aforesaid, Ground No.1 raised by the Appellant is allowed for statistical purposes.

9. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 30.05.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.05.2024
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