

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4848/M/2023
Assessment Year: 2017-18**

Shri Adil Zahir Shah, A-1202, Emgee Greens CHS SM Marg MTV Road, Behind Dosti Estate, Wadala (East), Mumbai – 400 037 PAN: CHLPS7890G	Vs.	Income Tax Officer, Ward-42(2)(1), Kautilya Bhavan, Avenue 3, Near Videsh Bhavan, G Block BKC, Bandra Kurla Complex, Bandra East, Mumbai – 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Himanshu Gandhi, A.R.

Revenue by : Shri C.T. Mathews, Sr. DR

Date of Hearing : 22 . 05 . 2024

Date of Pronouncement : 29 . 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 07.11.2023, impugned herein, passed by the 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. 2017-18.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 21.12.2019 under section 143(3) of the Act made the addition of Rs.34,89,500/- under section 69A of the Act on account of cash deposit by treating the same as deemed unexplained income and added the same in the income of the assessee. The assessee, being aggrieved, challenged the said addition before the Ld. Commissioner with a delay of more than 7 months, however, the Ld. Commissioner declined to entertain the prayer for condonation of delay on the reason that the assessee has not discharged the onus of sufficient cause within the meaning of section 249 of the Act. The Ld. Commissioner consequently dismissed the appeal of the assessee being not maintainable due to delay in filing the appeal.

3. The Assessee, being aggrieved, challenged the impugned order and before us submitted that the assessee did not receive the assessment order in time as the assessment order dated 21.12.2019 passed under section 143(3) of the Act along with demand of Rs.3,69,22,269/- was not uploaded on IT portal and therefore the Assessee was unable to file the appeal within the time prescribed. However, after getting certified copy from the jurisdictional Income Tax Officer, the Assessee on 03.01.2023 filed first appeal and therefore there was no delay in filing the appeal before the Ld. Commissioner.

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case and observe that the Ld. Commissioner in the impugned order at para No.2.7.1 has observed as under:

“That during the appellate proceedings notices were issued to the Assessee on 01.09.2023 & 30.10.2023, however, the assessee except requesting the adjournment, filed no reply in order to explain the delay in filing the appeal. The explanation given by the Assessee in Form No.35 does not amount to “sufficient cause” within the meaning of section 249 of the Act. Firstly as per

*the facts, the assessment order was passed on 21.12.2019 while the appeal was filed on **03.01.2023** with a delay of more than 7 months. The orders were duly served on the assessee **probably physically as well as electronically on email**. Thus it is apparent that explanation does not have substance and that the assessee has not discharged the onus of "sufficient cause" within the meaning of section 249 of the Act, hence, the delay in filing the appeal after more than 7 months cannot be accepted.*

(emphasis supplied by us)

4.1 We further observe that service of the assessment order upon the Assessee, as observed by the Ld. Commissioner in the impugned order itself has not been proved specifically, as the Ld. Commissioner in the impugned order recorded that order was duly served on the assessee and **probably** physically as well as electronically on email, which according to our considered opinion, goes to show that the Assessee may have received the assessment order or may not have received the same.

4.2 Even otherwise, there is no material available on record and/or not produced by the Revenue Department to contradict the claim of the Assessee qua not-uploading the Assessment order on ITBA portal, hence considering "*the peculiar facts and circumstances of the case in totality and the specific observation of the Ld. Commissioner that during the appellate proceedings though notices were issued to the assessee on 01.09.2023 & 30.10.2023 the assessee except seeking adjournment, preferred not to file any reply in response to the notices to explain the delay in filing the appeal*", we are inclined to condone the delay of around 7 months in filing first appeal before the Ld. Commissioner, however, subject to deposit of Rs.5,500/- in the account of the Revenue Department, within 15 days from the receipt of this order. Consequently, the delay is condoned accordingly and the case is remanded to the file of the Ld. Commissioner for decision afresh on merits.

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

Order pronounced in the open court on 29.05.2024.

**Sd/-
(RENU JAUHARI)
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.