

**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.4854/M/2023
Assessment Year: 2016-17**

Shri Arjun Ratna Thapaniya, 16/2, Bori Chawl, Sandook Lane, Chira Bazar, Marine Lines, Mumbai, Maharashtra- 400 002 PAN: ABBPT8043J	Vs.	Assessment Unit Income Tax Department, Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vikash Vishwasrao, 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 31.10.2023, 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. 2016-17.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 23.03.2023 under section 147 read with section 144 read with section 144B of the Act made the additions of Rs.1,87,944/- and Rs.1,58,474/- respectively on account of under reported salary income qua house rent allowance and other allowances such as gratuity, leave encashment, uniform allowance, conveyance etc. and deduction claimed under chapter VI-A of the Act.

3. The Assessee, being aggrieved, challenged the said additions by filing first appeal before the Ld. Commissioner, who by impugned order dismissed the appeal of the assessee due to delay of 111 days in filing first appeal before him, by holding *“that the Assessee has failed to furnish sufficient/reasonable cause in explaining the delay, hence the instant appeal filed after the expiry of due date is barred by limitation and not admitted”*.

4. The Assessee, being aggrieved, challenged the impugned order. The Assessee claimed that he was filing his return of income through ITP named Shri Vijay Sawant and used to inform him on the receipt of SMS/notices from the department. The assessee has received the SMS alert on 29.06.2023 i.e. after 3 months of passing of the assessment order. The said version of the assessed was found by the Ld. Commissioner as highly improbable. The Ld. Commissioner on non-furnishing of evidence with regard to the said claim construed that the Assessee has failed to produce any evidence, therefore the contention of the assessee is not tenable.

5. The assessee before us also claimed that the assessee is a technical retired person and not well aware about online filing and never used to login into income tax portal. The assessee used to forward the SMS received from IT Department qua assessment proceedings to one of the company's colleagues, who did not file any reply to the notices issued by the AO, which resulted into passing the ex-parte assessment order making the additions, hence by taking lenient view, the delay in filing the first appeal before the Ld. Commissioner may be condoned.

6. We have given thoughtful considerations to the peculiar facts and circumstances of the case. We do not find any material/reason to contradict the claim of the assessee, hence considering the reason of delay of 111 days in filing the appeal before the Ld. Commissioner as genuine and bonafide and the fact that no useful purpose has been served by the Assessee by delaying the filing of appeal, we are inclined to condone the delay in filing the appeal before the Ld. Commissioner. Consequently, the delay is condoned and the case is remanded to the file of the Ld. Commissioner for decision on merits, with liberty to the assessee to produce the relevant documents before the Ld. Commissioner to substantiate his claim, as produced before us.

7. We also direct the assessee to cooperate with the appellate proceedings and file the relevant submissions/documents which would be essential/required by the Ld. Commissioner for proper adjudication of the case. We clarify that in case of further default, the Assessee shall not be entitled for any leniency.

8. Thus, the case is remanded accordingly.

9. In the result, the appeal filed by 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.