

**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.144/M/2024
Assessment Year: 2014-15**

Shri Arun Shekhar Shetty, 1702, Raheja Tipco Heights, Rani Sati Marg, Malad (E), Maharashtra – 400 097 PAN: AECPS2896G	Vs.	Asst. Commissioner of Income Tax-30(1), Room No.502, 5 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Karkhanis, A.R.

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

Date of Hearing : 21 . 05 . 2024

Date of Pronouncement : 30 . 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 20.11.2023, 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. 2014-15.

2. In this case, the Assessing Officer (AO) vide assessment order dated 26.12.2018 passed under section 147 read with section 143(3) of the Act made the addition of Rs.22,70,750/- under section 69C of the Act on account of unexplained cash credit.

3. The Assessee, being aggrieved, challenged the aforesaid addition before the Ld. Commissioner with a delay of 36 days and claimed that the assessee has also filed first appeal on 31.01.2019 and this is a subsequent appeal. Because the Assessee was not in India during such period therefore delay of 36 days in filing the instant appeal has been occurred, which by considering a sufficient cause and reasonable delay, may be condoned.

4. The Ld. Commissioner though considered the said claim of the assessee, however, as the assessee did not file any evidence whatsoever at the time of appellate proceedings to justify the reason of delay in filing the appeal, therefore in the absence of any supporting evidence including copy of passport, air tickets etc. showing his absence from India, the Ld. Commissioner was unable to accept the assessee's request to the effect that the delay in filing the appeal was in any manner attributable to his stay outside India.

Even otherwise, with regard to the filing of first appeal on 31.01.2019 the assessee failed to file any documentary evidence, therefore the Ld. Commissioner did not accept the Assessee's contention and treated the same as evasive in nature and by holding *"that the willful and deliberate delay on the part of the assessee is without any good and sufficient reasons, the assessee deserves no sympathy and hence it is not a fit case for condoning the delay"*, ultimately rejected the prayer for condonation of delay and on this ground alone dismissed the appeal of the assessee being not maintainable.

5. The Assessee, being aggrieved, is in appeal before us.

6. Having heard the parties and perused the material available on record and given thoughtful considerations to the peculiar facts and circumstances of the case. The assessee before us reiterated the same claim as made before the Ld. Commissioner. The assessee before us also filed certain documents in support of his claim on merits as well as for condonation of delay. The assessee also filed his passport copy in order to show that during the period from 26.12.2018 when the assessment order was passed and till filing the instant appeal i.e. 08.03.2019 the assessee was outside India. The assessee also filed certain documents with regard to the purchase of property and written submissions allegedly furnished to the Ld. Commissioner.

7. The Ld. D.R. though refuted the claim of the Assessee, however supported the impugned order.

8. Considering the peculiar facts and circumstances of the case, we observe because the Assessee failed to file any evidence to justify the delay of 36 days in filing the appeal before the Ld. Commissioner and therefore the Ld. Commissioner was constrained to decline the application for condonation of delay and consequently dismissed the appeal of the assessee being not maintainable, hence the Assessee do not deserve any leniency, however, considering the delay as meager and document filed before us in order to support his contention qua absence from India during the period when the assessment order was passed and the date on which the first appeal was filed, and undertaking of the Assessee to the effect that he is ready to abide by any condition including the cost if any, we are inclined to condone the delay of 36 days in filing the first appeal before the Ld. Commissioner, however, subject to deposit of

Rs.11,000/- in the Prime Minister Relief Fund within 15 days from the receipt of this order. Thus the delay in filing first appeal before the Ld. Commissioner is condoned accordingly.

9. Coming to the merits of the case, as the assessee has not filed the relevant documents in support of his claim before the Ld. Commissioner who dismissed the appeal of the assessee in limine, hence for just decision of the case and for substantial justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate his claim.

10. We also direct the assessee to cooperate with the appellate proceedings and to 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.

11. Thus, the case is remanded accordingly.

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

Order pronounced in the open court on 30.05.2024.

**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.