

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

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

**ITA No.294/Mum/2024
Assessment Year: 2012-13**

Shri Asharam Bhuwar Prasad Prajapati, 15/B, Yadav Nagar, KK Compound, Kherani Road, Sakinaka, Andheri(East), Mumbai - 400 072 PAN: AGRPP9069M	Vs.	Income Tax Officer, Ward 41(1)(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 Bharat Kumar, A.R.

Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 30 . 05 . 2024

Date of Pronouncement : 25 . 06 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order even dated 10.08.2023, 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. 2012-13.

2. At the outset, we observe that there is a delay of 105 days in filing the instant appeal, for which the assessee has claimed that the Assessee had met with an accident on 18.06.2023 and remained hospitalized in R.K. Orthopadic hospital from 22.06.2023 to 03.07.2023, therefore the assessee was unable to file the respective appeal before the Tribunal within the limitation period, which resulted into delay of 105 days in filling of appeal, which was beyond the control of the assessee. The Ld. D.R. did not refute the claim of the assessee. Considering the medical issue/accident caused to the assessee, we are inclined to condone the delay in filing of the instant appeal. Consequently, the delay of 105 days in filing the instant appeal is condoned.

3. Coming to the merits of the case, we observe that the Assessing Officer (AO) vide assessment order dated 05.11.2019 under section 144 read with section 147 of the Act, added the entire amount i.e. 100% of the contractual receipts to the tune of Rs.37,13,698/- under section 69A of the Act, as unexplained and added the same in the income of the assessee.

4. The assessee though before the Ld. Commissioner filed the first appeal, however, remained un-represented due to non-compliance with the notices issued by the Ld. Commissioner, which resulted into affirmation of the addition made by the AO, therefore the assessee do

not deserve any leniency. However, considering the peculiar facts and circumstances, as the order passed by the Ld. Commissioner is ex-parte, and the Assessee has been regularly filing his return of income under section 44AD of the Act and showing reasonable gross profit and has shown gross profit of Rs.3,86,718/- on the gross purchase account of Rs.14,96,704/- which is 25% (approx.) in the AY under consideration, we are remanding this case to the file of the AO to recompute the tax liability by perusing the profit & loss account, sales tax return, sample copy of sales invoices, copy of 26AS statements, bank statements and the gross profit shown by the assessee in other 03 previous and subsequent Assessment years.

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

Order pronounced in the open court on 25.06.2024.

**Sd/-
(RENU JAUHRI)
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.