

**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.4823/Mum/2023
Assessment Year: 2014-15**

Shri Akshay Aniruddha Mestry, 64, Gaothan Lane No.1, Off S.V. Road, Andheri (West) Mumbai - 400 058 PAN: ANWPM4444K (Appellant)	Vs.	Income Tax Officer- 24(1)(1), Piramal Chambers, 7 th Floor, Parel, Mumbai - 400 013 (Respondent)
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Present for:

Assessee by : Shri Ravi Dasija, A.R.

Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 29 . 05 . 2024

Date of Pronouncement : 26 . 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 17.02.2023, 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. At the outset, we observe that there is a delay of 253 days in filing the instant appeal. The Assessee by filing a petition for condonation of delay along with duly sworn affidavit claimed that it seems that the impugned order was served vide email on 17.02.2023 whereas it is a fact that the assessee never received the impugned order in physical mode. As the Assessee do not check his personal

email regularly, as his emails are usually received on/sent from his business email, therefore the assessee could not receive the email through which the impugned order was sent. However, the Assessee during some time in the second week of November 2023 received a call from CPC Bangalore qua tax arrears for the assessment year in reference, therefore the assessee immediately contacted his new counsel Shri Dilip Patil (CA) and apprised him about the call received from CPC. The new Ld. C.A. immediately checked the assessee's account on IT portal and informed the assessee that the appeal filed by the assessee for the assessment year under consideration has in fact been disposed of and therefore the Assessee came to know about disposal of the appeal by the Ld. Commissioner only in the second week of November 2023 and immediately thereafter within 60 days the assessee filed the instant appeal but somehow delay of 255 days in filing the instant appeal has been occurred which may kindly be condoned and appeal filed by the assessee may be admitted.

3. On the contrary the Ld. D.R. refuted the claim of the assessee.

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case. No doubt the cause shown by the Assessee qua delay in filing the instant appeal appears to be unreasonable, unconvincing and insufficient for condonation of delay and therefore the Assessee does not deserve any leniency, however, as the Assessee has prayed that for the substantial justice one more opportunity may be given to the Assessee subject to imposition of reasonable cost. Considering the peculiar facts and circumstances specifically to the effects that the impugned order is also an ex-parte and the Ld. Commissioner in the constrained circumstances decided the appeal of the assessee in limine but not on merits, hence, for the just decision of the case and for the ends of substantial justice, we are inclined to condone the delay of 255 days in filing the instant appeal, however,

subject to deposit of Rs.11,000/- in the Revenue Department within 30 days from the receipt of this order.

5. Consequently, the case is remanded to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate his claim.

6. We also direct the assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential and 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. Hence, the case is remanded accordingly.

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

Order pronounced in the open court on 26.06.2024.

**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.