

**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.174/MUM/2024
Assessment Year: 2010-11**

Mr. Anish M. Kacharia (L/H of Late Shri Mukesh L Kacharia) G/1/2/5, Ground Floor, Patel Apartment, Milan Subway, Santacruz (West) Mumbai - 400054 PAN: AABPK8082H	Vs.	Income Tax Officer - 22(2)(3), Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Devendra Jain, 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 dated 15.11.2023, 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. 2010-11.

2. In the instant case, the Assessing Officer (AO) vide order dated 07.03.2016 under section 143(3) read with section 147 of the Act, has made the addition of Rs.21,45,408/- as unexplained expenditure under section 69C of the Act which was challenged by the assessee before the Ld. Commissioner by filing an appeal on 12.04.2016 in physical form, which was dismissed by the then Ld. Commissioner on 27.09.2018, however, with liberty to the Assessee to file the appeal electronically as per the provisions of the Rules. Thereafter, immediately on 22.10.2018 the Assessee filed the appeal in appropriate manner but with a delay of 921 days.

3. Despite sending more than 9 notices to the Assessee by the Ld. Commissioner, the Assessee except seeking adjournment on some of the occasions, did not file any reply/documents in support of his claim, therefore the Ld. Commissioner, by analyzing the provisions of law and considering the delay which was not substantiated by the assessee, ultimately dismissed the appeal of the Assessee in limine and/or on the point of limitation.

4. The Assessee being aggrieved is in appeal before us.

5. We have heard the parties and perused the material available on record. No doubt the Assessee has preferred first appeal against the assessment order dated 07.03.2016 in physical form before the Ld. Commissioner within time i.e. on 12.04.2016 and thereafter without using due diligence continued the same for a long proceeding for a long time till the decision by

the then Ld. CIT(A) for dismissal of the same being not maintainable in view of the latest provisions of the rule/non-filing of appeal in electronic mode, which amounts to inaction/negligence of the Assessee and therefore the Assessee does not reserve any leniency. However, considering the peculiar facts and circumstances, as the liberty was granted by the then Ld. Commissioner for e-filing of the appeal and the assessee complied with the direction of the Ld. Commissioner within time and therefore considering the facts and circumstances in totality, we are inclined to condone the delay of 921 days in filing the appeal before the Ld. Commissioner, however, subject to deposit of Rs.11,000/- in the Revenue Department within 30 days of the receipt of this order. The delay is condoned accordingly.

6. Coming to the merits of the case, we observe the Ld. Commissioner dismissed the case in limine for want of limitation but not on merit and therefore we are inclined to remand the case 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.

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

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.