

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1733/M/2024
Assessment Year: 2018-19**

M/s. APAC Financial Services Private Limited, Office No.501, 5 th Floor, South Annexe Tower 2, One World Centre, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 PAN: AAPCA5386H (Appellant)	Vs.	Additional/Joint/Deputy/ Assistant Commissioner of Income Tax/Income Tax Officer, National Faceless Appeal Centre, Ward 3(1)(1), Aayakar Bhavan, Mumbai - 400020 (Respondent)
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Present for:

Assessee by : Shri Dhairya Ravasa, C.A
Revenue by : Shri Manoj Kumar Sinha, Sr. D.R.

Date of Hearing : 26 . 06 . 2024
Date of Pronouncement : 28 . 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 09.02.2024, 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. 2018-19.

2. In the instant case, we observe that the Assessing Officer (AO) vide order dated 27.03.2021 under section 143(3) read with section 143(3A) & 143(3B) of the Act, made the additions of Rs.52,03,545/- & Rs.93,684/- respectively on account of business expenditure disallowance and preliminary expenses disallowance.

3. The Assessee, being aggrieved, challenged the said additions as well as assessment order dated 27.03.2021 by filing the first appeal on 30.04.2022 before the Ld. Commissioner, who somehow by observing that there is a delay of 369 days in filing the appeal and the assessee could not show any cogent reason for belatedly filing the appeal, rejected the application for condonation of delay and ultimately dismissed the appeal.

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case. Admittedly, the Hon'ble Apex Court in the suo-moto case i.e. suo-moto Writ Petition (c)No.3 OF 2020 in Re: Cognizance for extension of limitation, has waived/excluded the period starting from March 2020 to 28th February 2022 and therefore, the Assessee could have filed the appeal up to 30.03.2022, whereas the Assessee filed the same on 30.04.2022 which goes to show that there was delay of only 30 days in filing the appeal before the Ld. Commissioner. May be due to oversight or inadvertently the Ld. Commissioner

failed to take cognizance of the judgment delivered by the Hon'ble Apex Court in the aforesaid case. Hence, considering the peculiar facts and circumstances, as there was meager delay of 30 days in filing the first appeal before the Ld. Commissioner and therefore, we are inclined to condone the delay occurred in filing of the appeal before the Ld. Commissioner. Hence the delay of 30 days in filing of first appeal before the Ld. Commissioner by the Assessee, is condoned.

6. Coming to the merits of the case, as the Ld. Commissioner dismissed the appeal of the assessee in limine for want of limitation and has not decided the appeal on merits, hence for the just decision of the case and for the ends of 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 its claim before the Ld. Commissioner.

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

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

Order pronounced in the open court on 28.06.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
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.