

**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.4741/M/2023
Assessment Year: 2011-12**

Mr. Melvin Margues, Flat No.6, 2 nd Floor, Symobol Apts, Pertulian Road Off Peter Dias Rd Bandra West Mumbai – 400 050 PAN: ANCPM0389H (Appellant)	Vs.	Income Tax Officer, International Taxation Ward-3(2)(2), Room No.1625, 16 th Floor, Air India Bldg., Nariman Point, Mumbai – 400 021 (Respondent)
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Present for:

Assessee by : Shri Fenil Bhatt,A.R.

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

Date of Hearing : 22 . 05 . 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 25.10.2023, impugned herein, passed by the 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. 2011-12.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 24.12.2018 under section 144 read with section 147 of the Act, made the addition of Rs.18,06,875/- on account of undisclosed source of income and added the same in the total income

of the Assessee, in the absence of any explanation from the Assessee qua source of such foreign remittance.

3. The Assessee being aggrieved challenged the said addition before the Ld. Commissioner and lodged the claim that he was not in India during the period of the assessment proceedings as well as during the assessment proceedings and till March 2022, however once he visited Bank of India, Dadar West Branch in April 2022, then only came to know that his bank account has been freezed by the Revenue Department and therefore thereafter only collected the assessment order personally from the Department on 29.06.2022 and subsequently on dated 15.07.2022 filed the first appeal before the Ld. Commissioner.

4. We have considered the claim of the assessee, however, realized that reason given by the assessee before the Ld. Commissioner, was not supported by any documentary evidences therefore the Ld. Commissioner, by holding that there was no sufficient reason or cause for the Assessee to file the appeal delayed, dismissed the appeal of the Assessee due to delay of 1269 days in filing the first appeal and therefore the Assessee do not deserve any leniency, however, considering the fact specifically to the effect that the assessee was not in India during the relevant period, which resulted into delay in filing the appeal before the Ld. Commissioner and therefore for the just decision of the case and for the ends of substantial justice, we are inclined to afford an opportunity to the assessee to substantiate his claim qua delay in filing the first appeal before the Ld. Commissioner by submitting the relevant documents and therefore we are remanding the instant case to the file of the Ld. Commissioner to afford one more opportunity to the assessee to substantiate his claim qua delay in filing the first appeal and in case

the assessee would be able to succeed in demonstrating/substantiating the reason of delay in filing the appeal before the Ld. Commissioner, then the Ld. Commissioner shall decide the appeal on merits.

5. 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.

6. 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 28.06.2024.

**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.