

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**  
**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.2083 & 2081/MUM/2024**  
**ITA Nos.2087 & 2086/MUM/2024**

**Assessment Years: 2018-19 & 2019-20**

Shree Dental Speciality Hospital Khadakpada Kalyan, Kalyan, Maharashtra – 421301  (PAN : ACLFS9988E)	Vs.	Central Circle – 3, Thane
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : None  
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 09.07.2024  
Date of Pronouncement : 18.07.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

These four appeals filed by the assessee are against the order of Ld. CIT(A), Pune-11, vide order no. ITBA/APL/S/250/2023-24/1061187960(1), dated 20.02.2024 passed against the assessment orders by ACIT, Central Circle-3, Thane, u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 09.02.2021 for Assessment Year 2018-19 and dated 10.02.2021 for Assessment Year 2019-20 and two penalty orders u/s. 270A of the Act, dated 16.03.2022 for Assessment Years 2018-19 and 2019-20

2. This is a set of four appeals comprising of two appeals on the assessment made u/s.144 of the Act for Assessment Years 2018-19 and 2019-20 and another two appeals for penalty imposed u/s. 270A for the same stated Assessment Years. Issues raised are common in each set of two appeals and are therefore disposed off with this consolidated order.

3. In the quantum appeals, assessee has raised as many as ten grounds of appeal all of which substantively deal with violation of principles of natural justice by the authorities below. Similarly, in the other set of appeals relating to penalty, grounds raised are five in number which essentially are towards not offering reasonable opportunity of being heard to the assessee and passing the order hurriedly without application of mind. For the sake of brevity, the grounds are not reproduced.

4. We draw facts from the appeal relating to Assessment Year 2018-19 in ITA No.2083/Mum/2024, wherein return of income was filed by the assessee on 20.11.2018, reporting total income at Rs.4,83,322/-. It is noted from the impugned assessment order that a survey action u/s.133A of the Act was conducted on 21.02.2019 in the case of assessee. Case of the assessee was taken up for scrutiny assessment for which statutory notices were issued and served on the assessee. In the course of assessment proceedings, ld. Assessing Officer offered several opportunities to the assessee to make compliance and substantiate its claim. Ld. Assessing Officer observed that time and again, assessee had failed to attend and furnish required details. Accordingly, left with no other alternative, assessment was completed

u/s. 144 on the basis of material and information available on records. Ld. Assessing Officer, while completing the assessment, made addition of Rs.1,46,53,543/- towards difference in profit as reported in the return and as calculated, based on statement recorded in the course of survey. Other additions made are in respect of purchases and expenses claimed by the assessee for which Ld. Assessing Officer dis-allowed 30% of the same by holding it as fair and reasonable. Thus, an amount of Rs.1,31,34,940/- was disallowed towards purchases and Rs.50,20,281/- towards expenses. Aggrieved, assessee went in appeal before the Ld. CIT(A).

5. Ld. CIT(A) noted that assessee had not paid taxes in full, due on the income returned by the assessee as filled in Column 8.1(c) of Form No.35. He examined the Income Tax return filed by assessee on 20.11.2018 and noted that assessee had computed the tax liability along with interest totalling to Rs.1,72,820/- which had been shown as payable in Column 11 of Part-B-TTI- Computation of tax liability on total income.

5.1. He also noted that there is a delay of 461 days in filing the first appeal. A show cause notice was issued on the assessee as to why the appeal should not be dismissed in limine in terms of section 249 of the Act. Assessee furnished the reply stating that owing to covid 2019 pandemic, delay occurred in filing the appeal. It was also submitted that dental profession had severely hit during the pandemic. Assessee explained various reasons for the financial difficulties on account of loans and other litigation in court of law for non deposit of the due taxes. After considering the reply filed by the assessee, Ld. CIT(A) dismissed the first appeal in limine for non payment of taxes due on the returned income as well as on account of delay in filing of the said appeal.

Identical view was taken by the Id. CIT(A) for all the other three cases also. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, none represented the assessee. First appeal has been dismissed on technical ground of delay not condoned and non deposit of taxes due on income returned. Therefore, we are inclined to take up the matter *ex parte qua* assessee, it is to be remitted back to the file of Id. CIT(A) for *denovo* meritorious adjudication by giving a chance to the assessee to comply with the section 249 of the Act. While remitting the matter back, we take note of the submission made by the assessee before the Id. CTI(A) explaining the delay caused in filing the first appeal which is attributable to the pandemic of Covid 2019, more particularly when assessee is engaged in the medical profession of dentistry. Accordingly, the delay which occurred while filing the appeal before the Id. CIT(A) is condoned.

6.1. On the issue relating to the deposit of taxes due on the income returned by the assessee of Rs.1,72,820/- as noted by Id. CIT(A) from examination of the return of the assessee, assessee is directed to furnish relevant documentary evidence to establish that the said amount has been deposited as required u/s. 249 of the Act. Thereafter, the Id. CIT(A) may take up the matter for *denovo* meritorious adjudication of the grounds of appeal taken before him in accordance with the provisions of law. Needless to say that assessee be given reasonable opportunities of being heard to substantiate its claim. We direct the assessee, to be diligent in attending the hearings before the Ld. CIT(A) for its expeditious disposal. Accordingly, appeal of the assessee in ITA No.2083/Mum/2024 for Assessment Year 2018-19 is allowed for statistical purposes.

7. Since all other three appeals have been dismissed by the Id.CIT(A) on identical fact pattern, following our observations and findings in ITA No.2083/Mum/2024, the three appeals are also allowed for statistical purposes, by remitting the same back to the file of Id. CIT(A) for *denovo* meritorious adjudication.

8. In the result, all the four appeals of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 18 July, 2024

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 18 July, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai