

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसमसी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 45/Kol/2024**  
**Assessment Year: 2013-14**

Shree Balajee Agro Mills Pvt. Ltd.  (PAN: AALCS 8282 L)	Vs.	ITO, Ward-5(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	06.06.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.07.2024
For the Appellant/ निर्धारिती की ओर से	Shri C. M. Roy, CA
For the Respondent/ राजस्व की ओर से	Shri Supriya Pal, Addl. CIT D.R

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi dated 07.11.2023 for the AY 2013-14.

2. Issue raised in first grounds of appeal is against the order of Ld. CIT(A) passing ex-parte order without affording the reasonable opportunity of hearing to the assessee.

3. Facts in brief are that the assessee filed return of income on 30.09.2013 declaring total income of Rs. 5,70,166/-. The case of the assessee was selected for scrutiny under CASS and the assessment was framed u/s 143(3) of the Act assessing total income of Rs. 23,63,150/-. Thereafter the case of the assessee was reopened u/s 147 read with Section 148 of the Act by issuing notice u/s 148 of the Act dated 16.03.2021 which was not complied with by the assessee. Thereafter the AO ,after issuing final opportunity to the assessee which remained non complied, added Rs. 75,00,000/- as unexplained cash credit to the income of the assessee in the assessment framed u/s 147 read with Section 144 of the Act dated 21.03.2022.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee on the grounds that the appeal of the assessee is barred by limitation as there was a delay of 299 days.

5. After hearing the rival contentions and perusing the material on record, we find that the Ld. CIT(A) has dismissed the appeal in limine without deciding the issues on merit on the ground that there was delay of 299 days in filing the appeal. We find that the mother of the director Mr. Manish Agarwal of the assessee firm was suffering from serious ailments and therefore the appeal could not be filed on time nor any petition was filed before the Ld. CIT(A). Considering the facts before us, we are of the considered view that restoring the issue to the file of Ld. CIT(A) would not serve any meaningful purpose as the proceedings culminated ex-parte even before the AO. Therefore in the interest of justice and fair play, we are of view that the appeal should be restored to the file of AO for de novo adjudication after taking into account the evidences which the assessee may furnish in defense of its case. Accordingly we restore this case to the file of AO with the direction to decide the same de novo after affording a reasonable opportunity of hearing to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 22<sup>nd</sup> July, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 22<sup>nd</sup> July, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shree Balajee Agro Mills Pvt. Ltd. , 2<sup>nd</sup> Floor, Room no. 232, 21, Hemant Basu Sarani, Kolkata-700001
2. Respondent – ITO, WArD-5(1), Kolkata
3. Ld. CIT(A)- , Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata