

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI OM PRAKASH KANT, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 104/MUM/2024
(Assessment Year : 2016-17)**

Rahul Ashok Kamat C/o Desai & Khanolkar Chartered Accountants, 4/5 Laxmi Commercial Centre, Jayprakash Nagar, Road No. 1, Goregaon East, Mumbai- 400063.	Vs.	I.T.O., Ward-34(2)(1) Kautilya Bhavan, C-41 to C-43, G-Block, BKC, Bandra East, Mumbai-400051.
PAN/GIR No. BGZPK7224C		
(Appellant)	..	(Respondent)

Assessee by	Shri. Lal Kaka a/w S.G. Desai
Revenue by	Smt. Mahita Nair- Sr. DR
Date of Hearing	29/07/2024
Date of Pronouncement	29/07/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 27.12.2023 passed in Appeal no. NFAC/2015-16/10250314 by the Ld. Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the

Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2016-17, wherein learned CIT(A) has dismissed assessee's appeal upon rejection of assessee's application for condonation of delay in filing the same.

2. At the very outset, learned representative for the appellant assessee has, apart from the submissions related to the merits, submitted that learned CIT(A) has erred in not condoning the delay of 199 days, despite bonafide cause of non receipt of any notice, which is clear from the affidavit of assessee and his friend's wife Ms. Devarakonda Gowthami.
3. Learned DR has supported the impugned order.
4. We have heard the parties and perused the material available on record.
5. It transpires from the perusal of records that the assessee filed an appeal before learned CIT(A) against the penalty order dated 22.09.2022 (served on the same day) passed u/s. 271(1)(C) of the Act by a delay of 199 days. First appeal was dismissed by the First Appellate Authority solely upon rejection of assessee's prayer for condonation of delay in filing the same.
6. The limitation period for filing an appeal before learned CIT(A) u/s. 249(2) of the Act is 30 days. However, section 249(3) of the Act empowers the first appellate authority to condone the delay if satisfied that appellant had sufficient cause for not presenting it within that period. Learned CIT(A) was, however not satisfied to condone the said delay of 199 days.

7. We find that the assessee, has filed an affidavit to support his contention that he had entrusted his tax matters to his friend's wife Ms. Devarakonda Gowthami, who has also filed an affidavit, stating that she could not communicate the receipt of assessee's notices. Revenue department has not filed any counter affidavit against the contents of these affidavits.
8. It is well established principle of law that the substantial justice cannot be denied on technical aberrations. The object of prescribing procedure is to advance the cause of justice. In an adversarial justice system like ours, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Justice is the goal of jurisprudence. Any interpretation which eludes or frustrates the recipient of justice, is not to be followed. The provisions relating to the condonation of delay, need to be interpreted liberally.
9. The object of prescribing the time period for filing of the appeal, is to expedite the proceedings before the concerned authorities and to advance the cause of justice. In view of uncontroverted affidavits filed by the assessee and his friend's wife Ms. Devarakonda Gowthami, we, condone the said delay in filing the first appeal before the first appellate authority and restrain ourselves from making any observation in respect of the merits of the case.
10. In the result, the appeal is allowed. The impugned order dated 27.12.2023 is set aside. The delay in filing the first appeal before first appellate authority i.e learned CIT(A) stands condoned. We restore the matter back to the file of

learned CIT(A) for passing order afresh on merit in accordance with law. Needless to say that the first appellant authority shall ensure the substantial compliance of the principles of natural justice.

Order pronounced in open court today on 29.07.2024

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 29/07/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai