

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

**BEFORE SHRI NARENDER KIMAR CHOUDHRY, JUDICIAL MEMBER  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.4718/Mum/2023  
Assessment Year: 2014-15**

Gamila Buildcon Pvt. Ltd.  1305 Bhumiraj Costa Rica, Plot No. 1 and 2, Sector 18, Sanpada, Navi Mumbai- 400705.  <b>PAN: AAECG 6221 A</b>  (Appellant)	Vs.	DCIT, NFAC, Delhi          (Respondent)
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**Present for:**

Assessee by : Shri Ajay Tulsian, CA  
Revenue by : Shri Prashant Mahajan, Sr. DR

Date of Hearing : 03.07.2024

Date of Pronouncement : 31.07.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 22.12.2022 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

*"i. That the Learned CIT(A) erred in dismissing the appeal filed by the appellant for non-prosecution and thereby confirming the addition made by the Ld. Assessing Officer. That on the facts and in the circumstances of the case, the said dismissal of appeal being wrong and bad in law, it is prayed that the matter may very kindly be restored back to the file of the Ld. CIT(A) to dispose the appeal on merits of the case after giving proper opportunity of being heard to the appellant.*

*ii. The Learned CIT(A) erred in not disposing various grounds of appeal raised by the appellant. That on the facts and in the circumstances of the case the Learned CIT(A) ought to have decided all the grounds of appeal*

*which were duly supported by detailed statements of facts filed along with the appeal.*

*iii. The Learned CIT(A) while dismissing the appeal erred in upholding the action of the AO in making the addition of Rs. 1,00,00,000/- under section 68. That on the facts and in the circumstances of the case and in law the addition made is wrong, bad in law and is prayed to be deleted.*

*iv. The appellant craves leave to add, to alter, amend, modify, substitute, delete and /or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arises.”*

2. There was delay in filing this appeal before the ITAT by 304 days. The assessee has filed application for condonation of delay along with affidavit dated 07.06.2024. It is reported that ld. CIT(A) has passed an ex-parte order for non-prosecution on 22.12.2022. It is also explained that assessee has provided e-mail of its erstwhile counsel as [taxcoca@yahoo.in](mailto:taxcoca@yahoo.in) and erstwhile counsel was M/s. Chandak Agrawal & Co., Mumbai who filed the income tax returns of the company. However, the assessment proceedings and appeal matter were attended by a different counsel i.e. M/s. Arora Banthia & Tulsian Chartered Accountants. Since in Form 35 the e-mail Id was automatically listed as [taxcoca@yahoo.in](mailto:taxcoca@yahoo.in) as the return was filed electronically, therefore, the fact of passing of ex-parte order by the ld. CIT(A), NFAC was not in the knowledge of the assessee company. However, on receipt of penalty notice u/s 271(1)(c) in October, 2023, the assessee got cognizance of the fact that an ex-parte order has already been passed by the ld. CIT(A), NFAC in its case on 22.12.2022. The assessee submitted that because of the above reason the appeal could not be filed within stipulated time and pleaded to condone the delay of 304 days in filing the appeal.

3. After hearing both the sides and considering the aforesaid fact as elaborated in the affidavit and discussed above, we consider that it appeared that there is a bona fide cause for delay in filing the appeal because of inadvertently incorporating the wrong e-mail ID pertaining to

the erstwhile counsel of the assessee in the income-tax proceedings as discussed supra in this order. The Hon'ble Supreme Court in the case of Collector Land Acquisition vs Mst, Katiji & Ors. Civil Appeal No. 460 of 1987 dated 19.12.1987 held that sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to the approach which scuttles a decision on merit. In the light of the above facts and findings, we condone the delay of 304 days in order to decide the appeal on merit.

4. Fact in brief is that return of income declaring total income of Rs. Nil was filed on 28.09.2014. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on the basis of information available that assessee has made transaction of Rs. 10,00,000/- with various shell companies which remain unexplained. The assessing officer has noticed that assessee has entered into transaction with shell companies in whose cases profit before tax was less than 1% of the turnover. Therefore, the assessing officer was of the view that assessee company was one of the beneficiary of funds of Rs. 100,00,000/- lacs obtained through the various shell companies and the same was treated as unexplained credit u/s 68 of the Act. The same was added to the total income of the assessee as unexplained credit u/s 68 of the Act.

5. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has not adjudicated the appeal of the assessee on merit but the same was dismissed for non-prosecution, since the assessee has not made compliance before the ld. CIT(A).

6. Heard both the sides and perused the material on record. On similar reason as discussed while condonation of delay in filing the appeal the assessee submitted that in Form No. 35 filed before the ld. CIT(A) the e-mail ID of the erstwhile counsel as [taxcoca@yahoo.in](mailto:taxcoca@yahoo.in) was wrongly incorporated automatically since the assessee had filed the

appeal electronically. Therefore, the actual counsel who has been appointed for appeal and reassessment matter could not get access of the notices of hearing issued by the ld. CIT(A). Therefore, neither any adjournment nor any written submission could be filed by the ld. CIT(A). The assessee also submitted that only on receipt of penalty notice, the assessee came to know that ld. CIT(A), NFAC has passed ex-parte order on 22.12.2022.

7. Looking to the above facts and circumstances, we consider it appropriate to restore the case of the assessee to the file of the ld. CIT(A) for adjudicating on merit as contemplate u/s 250(6) of the Act after considering the material available on record and providing opportunity to the assessee to make submission on the points raised on which addition was made u/s 68 of the Act. Needless to say that adequate reasonable opportunity be provided to the assessee. The assessee is also directed to make due compliance before the ld. CIT(A) without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 31.07.2024.

**Sd/-**

**(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

**Sd/-**

**(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 31.07.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai