

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 552/MUM/2024  
Assessment Year: 2010-11**

Vinit Vijay Kumar,  
35 Shreyas, 180 Madam Cama  
Road, Nariman Point,  
Mumbai-400020.

**Vs.**

ACIT, Central Circle-13, (Now  
DCIT, Circle 17(1), Mumbai),  
G Block BKC, Bandra Kurla  
Complex, Kautilya Bhavan,  
Bandra East,  
Mumbai-400051.

**PAN NO. AACPV 9310 Q  
Appellant**

**Respondent**

Assessee by : Mr. Dharmesh Shah  
Revenue by : Mr. Ashish Kumar, Sr. DR

Date of Hearing : 27/06/2024  
Date of pronouncement : 31/07/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee has been filed against order dated 10.01.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2010-11, raising following grounds:



1. *The Ld. CIT(A) erred in law and in facts in passing order u/s.250 of the Act by confirming the addition made by Ld. A.O.*
2. *The Ld. CIT(A) erred in law and in facts in not condoning the delay in filing the appeal and dismissing the appeal in limine.*
3. *The Ld. CIT(A) erred in law and in facts in confirming the addition of Rs. 58,48,060/- on account of undisclosed cash found at the time of search.*

2. At the outset, the Ld. counsel for the assessee referred to ground No. 2 of the appeal and submitted that the Ld. CIT(A) has not condoned the delay in filing the appeal and dismiss the appeal in *limine*. The facts qua the issue in dispute are that the assessment order u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') was passed on 28.12.2011 which has been claimed as served on the assessee on 22.12.2011 and therefore, under the provisions of section 249(2) of the Act appeal should have been presented on or before 21.01.2012 (within 30 days of the of the service of impugned order) before the Ld. CIT(A). However, the appeal was filed before the Ld. CIT(A) on 24.09.2018 i.e. a delay of more than six years and eight months. In this regard before the Ld. CIT(A) the assessee mainly submitted that the assessee being a layman to the provisions of the Act was solely depended upon his earlier counsel and was under the impression that his earlier counsel during relevant period had filed the appeal. However, he appointed another counsel when the matter was discussed to him and notice for the payment of the tax arrears was received by the assessee. The assessee submitted that erstwhile counsel did not consider filing of the appeal but this fact was not informed to the assessee. Under the circumstances, the assessee submitted before



the Ld. CIT(A) that due to mistake of the counsel, the litigant could not be held responsible. According to the assessee, there existed a sufficient cause and the person might not be suffered due to having caused beyond his control which is not deliberate. However, after considering the submission of the assessee, the Ld. CIT(A) rejected the application of the assessee for condonation, observing as under:

*“4.1 The request for condonation of delay is duly considered. This is an admitted fact that the appellant has filed the appeal which is belated by more than six years and eight months. The appellant has contended that he has handed over all the appeal papers, i.e. assessment order, demand notice etc. to his regular counsel, Shri Nimish Thakore, Chartered Accountant, who forgot to file the appeal in time and did not intimate the same to the appellant in time. In the meantime, the counsel, namely Shri Nimish Thakore, quit the work of the appellant. The appellant was under the impression that his earlier counsel has filed the appeal. The appellant has filed a letter dated 09.10.2023 by confirming the above stated facts. The appellant has contended that when the AO insisted for making payment of demand raised vide order u/s. 143(3), he came to know this fact that previous counsel has not filed the appeal. He later appointed the present counsel who prepared the appeal and filed it. Thus, the assessee has contended that delay in filing of appeal is attributable to the counsel of the assessee. In view of this, the appellant made a request for condonation of delay by relying upon the various decisions of the Courts in favour of the appellant.*

*4.2 As per Section 249(3) of the Act, the first appellate authority may on "good and sufficient reasons" can admit an appeal after the expiry of the period of limitation. Here in the present case, the appellant has taken a lame excuse that he was not aware about the status of the filing of appeal. The appellant however did not submit any evidence to support the reason for abnormal delay in filing of appeal. Simply taking pretext of the counsel not filed the appeal does not constitute a "good and sufficient cause" for condoning the delay of a period extending more than six years and eight months. It is held in the case of P.K. Ramchandran vs. State of Kerala (1997) 7 SCC 556 that law of limitation may harshly affect a particular party but it has to be applied with all its vigor when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is settled maxim that vigilantibus non dormientibus jura subserviunt (law assists those who are vigilant and not those who sleep over their rights). Considering the deliberate delay on the part of the assessee without good and sufficient reasons, the assessee deserves no sympathy and hence, it is not a fit case for condonation of delay.*



*Hence, the application for condonation of delay is hereby rejected. In view of this appeal is held as not maintainable.”*

3. We have heard rival submissions of the parties and perused the relevant material on record. The Ld. CIT(A) has dismissed the appeal of the assessee in *limine* as not maintainable. We find that assessee did not file any evidence in support of its claim before the Ld. CIT(A) that delay in filing appeal was attributable to the earlier counsel. The assessee has neither filed any affidavit from the earlier counsel either before the Ld. CIT(A) or before us. In such circumstances, the action of the Ld. CIT(A) is justified. Before us, the Ld. counsel for the assessee submitted that he is willing to file affidavit from the concerned counsel stating the reasons why he could not file the appeal on time. Accordingly, we feel it appropriate to restore the matter back to the file of the Ld. CIT(A) for considering the documentary evidence in support of application for condonation of the delay and decide the matter of condoning delay afresh. If he finds that the concerned counsel was responsible for the delay in filing the appeal then he may consider the application of the assessee for condonation of the delay in accordance with law and then may decide the appeal on merit in accordance with law. The ground No. 2 of the appeal of the assessee is accordingly allowed. Since, we have already restored the appeal back to the file of the Ld. CIT(A) for deciding the matter of the condonation of the delay, the other grounds raised by the assessee are rendered academic at this stage.



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

**Order pronounced in the open Court on 31/07/2024.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 31/07/2024  
Rahul Sharma, Sr. P.S.

**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,  
(Assistant Registrar)  
**ITAT, Mumbai**