

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND**

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 471/DEL/2024 (A.Y 2017-18)

Mohd. Imran Mohalla, Tarinan, Khurja, Bulandshahr, Uttar Pradesh PAN No. AAAP19916M (APPELLANT)	Vs.	ACIT Circle 2(3)(1) Bulandshahr, Uttar Pradesh (RESPONDENT)
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Assessee by :	NONE
Department by:	Sh. Jatender Kumar Kale, SR. DR

Date of Hearing	01.08.2024
Date of Pronouncement	08.08.2024

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for Assessment Year 2017-18 against the order of the Ld. CIT(A)/National Faceless Appeal Centre ('NFAC' for short)- Delhi dated 12.02.2024.

2. The grounds of Appeal are as under:-

“1. That on the facts and in the circumstances of the case, where the assessment order was passed on 29.12.2019 and was served upon email id of the counsel and the assessee who obtained the copies of the assessment order from the counsel on 31.03.2021 and filed his appeal in Form -35 on 23.04.2021 which was within the extended Covid limitation period from 15 March 2020 to 28 February 2022, the Id CIT Appeals, NFAC was wrong in dismissing the appeal stating that the instant appeal filed after due dated is barred by limitation.

2. That on the facts and on the circumstances of the case, the delay in filing of the first appeal deserves to be condoned and the appeal filed deserves to be admitted.

3. That on the facts and in the circumstances of the case the assessee seeks an opportunity to present his case.

4. That the assessee craves leave of this Hon'ble Court to add, amend, alter or withdraw any ground at the time of hearing.”

3. Brief facts of the case are that, an assessment order came to be passed on 29/12/2019 u/s 143(3) of the Act by making addition of Rs. 24,97,029/- by estimating net profit at 8% on the turnover of Rs. 3,99,42,581/- as per the provision of Section 44AD of the Income Tax Act, 1961 ('Act' for short). Aggrieved by the assessment order dated 29/12/2019, the assessee preferred an Appeal before the Ld. CIT(A) on 23/04/2021.

4. The Appeal filed by the assessee has been dismissed by the Ld. CIT(A) on delay in latches vide order dated 12/02/2024. Aggrieved

by the order dated 12/02/2204 passed by the Ld. CIT(A), the assessee preferred the present Appeal on the grounds mentioned above.

5. None appeared for the Assessee, the notice sent by the registry returned as answered, considering the issue involved in the present Appeal we deem it fit to decide the Appeal on hearing the Departmental Representative and after verifying the material on record.

6. The Ld. Departmental Representative relying on the orders of the Lower Authorities, submitted that though there is a delay of 458 days, even after excluding the covid period there is still gap of 42 days which is pre-covid period which has not been properly explained by the Assessee, thus the Ld. CIT(A) has rightly dismissed the Appeal as barred by limitation.

7. We have heard the Departmental Representative, perused the material available on record. An assessment order has been passed on 29/12/2019 and the Appeal has been instituted before the Ld. CIT(A) on 23/04/2021. As per the Ld. CIT(A), the assessee

has received the assessment order on 31/03/2021 and the Appeal has been filed after gap of 458 days which cannot be condoned. Though the Ld. CIT(A) discussed the Covid19 pandemic and the lockdown thereon, formed an opinion that out of 458 days the delay of 42 days comes to pre-Covid restriction which has not been explained with a reasonable cause by the assessee. In our considered opinion, the Ld. CIT(A) should have condoned the said delay of 42 days and should have decided on merit considering the fact that even before the announcement of lockdown the public at large were in panic and confusion to face the upcoming pandemic.

8. In view of the facts and circumstances, we condone the delay of 42 days in filing the Appeal before the CIT(A) and restore the matter to the file of Ld. CIT(A) to decide the Appeal filed by the assessee on merit. Accordingly, the Appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 08th AUGUST, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated : 08/08/2024

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

*R.N, Sr. PS**

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

