

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं. /I.T.A. No. 315/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2013-14)

Luv Procon Private Limited Times Square Arcade, Opp. Rambaug, Nr. Ravija Plaza, Thaltej-Shilaj Road, Ahmedabad, Gujarat, 380059	बनाम/ Vs.	ITO Ward 2(1)(1), Ahmedabad
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AACCL1740P		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mehul K. Patel, Advocate
प्रत्यर्थी की ओर से/Respondent by :	Shri Ravindra, Sr. DR

Date of Hearing	08/08/2024
Date of Pronouncement	14/08/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 31.10.2023 for the Assessment Year 2015-16.

2. There was a delay of 53 days in filing of this appeal. The assessee has filed an affidavit explaining the reason for delay. It was submitted that the appeal order passed by NFAC was sent on the email ID luvprocon12@gmail.com, which was not accessed and checked for a long time for the reason that the office was

closed for a long duration of Diwali. Otherwise, also the assessee was not checking its mail regularly and due to this reason, there was a delay in filing of this appeal. It was further submitted that the order was not uploaded on the Portal. The Ld. Sr. DR also has not raised any objection to the condonation of delay. Considering the reason as explained by the assessee, the delay is condoned.

3. The brief facts of the case are that the return of income for A.Y. 2013-14 was filed on 21.05.2014 declaring Nil income. The AO had initiated proceeding under Section 147 of the Act on the strength of information received that assessee had received accommodation entries from entities controlled by one Shri Jignesh Shah. In the course of assessment proceeding, no compliance was made by the assessee and assessment was completed under Section 147 r.w.s. 144 of the Income Tax Act, 1961 (in short 'the Act') on 29.03.2022 at total income of Rs.66 Lacs.

4. Aggrieved with the order of the AO, the assessee had filed an appeal before the first appellate authority, which has been decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

5. The assessee is now in appeal before us. The assessee has taken following grounds in this appeal:

"1. That the learned NFAC has grievously erred in passing ex parte order and not giving reasonable opportunity of hearing,

and in issuing notices through e mail, though not opted for by appellant.

2. *That on facts and law the learned NFAC has grievously erred in dismissing the appeal on account of delay and in not deciding the appeal on merits.”*

6. Shri Mehul K. Patel, Ld. AR for the assessee explained that the Ld. CIT(A) has passed an ex-parte order and the appeal of the assessee was dismissed on the ground of delay in filing the appeal before him and without considering the merits of the case. He explained that all the communication was sent by the Ld. CIT(A) on the email ID, whereas the assessee in Form No.35 had categorically mentioned that no notice/communication should be sent on the email. Since, no physical notices were sent by the Ld. CIT(A) and the assessee not being a tech-savvy did not check the email account. As a result, no compliance could be made before the Ld. CIT(A). The Ld. AR submitted that in the interest of justice, the matter may be remanded to the Ld. CIT(A) with a direction to condone the delay in filing of the appeal and also to decide the matter on the merits of the case.

7. The Ld. Sr. DR did not express any objection if the matter was set aside to the Ld. CIT(A).

8. We have considered the submissions of the assessee and the facts of the case. It is found from Form No.35 that the assessee had indicated its choice that no notice / communication may be sent on email. It appears from the order of the Ld. CIT(A) that all the opportunities provided by him were by way of e-notices

and no physical notice was sent to the assessee. When the assessee had categorically notified in Form No.35 that no notice / communication should be on email, the Ld. CIT(A) was not correct in dismissing the appeal by sending e-notices only. The assessee had also explained the reason for delay in Form No.-35. It was submitted that the Director had lost his password and could not check his email account on which the order was sent. The matter come to the notice of the assessee when there was a notice for refund adjustment. The Ld. CIT(A) may decide the delay in filing of appeal before him on merits, taking a considerate view in the matter and after allowing a proper opportunity of being heard to the assessee. The matter is, therefore, set aside to the Ld. CIT(A) for fresh adjudication of the matter after allowing opportunity to the assessee by sending physical notices along with e-notices.

9. In the result, appeal preferred by the assessee is allowed for statistical purposes.

This Order pronounced on 14/08/2024

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 14/08/2024
S. K. SINHA

Sd/-

(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अर्पित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

True Copy

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad