

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

**BEFORE: SHRI MS. PADMAVATHY S, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 3238/MUM/2024
(Assessment Year : 2019-20)**

Navyoug Vikas Nagri Sahakari Pathpedi Ltd. 6, Chandranagar, B Wing, Ground Floor, Damani Estate, Naupada, Thane, 400602.	Vs.	Income Tax Officer, Ward 3(1) Room No.3, 6 th Floor, B wing, Ashar IT Park, Road no. 16Z, Wagle Industrial Estate, Thane, 400604.
PAN/GIR No. AAAAN5136F		
(Appellant)	..	(Respondent)

Assessee by	Shri. Kumar Kale
Revenue by	Shri. Ashok Kumar Ambastha- Sr. AR
Date of Hearing	22/08/2024
Date of Pronouncement	26/08/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 23.04.2024 passed in Appeal no. NFAC/2018-19/10198637 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.] 2019-20, 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 merits of the case, submitted that the first appeal was filed before learned CIT(A) on 20.02.2023 against the order dated 29.10.2020, which was communicated to the assessee on 31.10.2020. Learned CIT(A) has dismissed the appeal merely upon rejection of assessee's application for condonation of delay in filing the same. Further, submitted to condone the said delay caused in filing first appeal and to direct learned CIT(A) to decide the matter afresh on merit after affording an opportunity of hearing to the assessee.
3. Learned DR submitted that no sufficient cause was shown to the first appellate authority to condone the said delay of about 812 days and supported the impugned order.
4. We have heard the parties and perused the material available on record.
5. We notice that 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. Assessee's delay condonation application is part of the impugned order, according to which, it appears that Shri. Shyam B. Dhanawade, the CEO of the assessee society filed an affidavit before the first appellate authority stating that during the period under consideration,

pandemic COVID- 19 restrictions were in force. The accountant of the assessee failed to communicate the assessment order to the committee. Chartered Accountant also failed to file timely appeal. Society's personnel were not conversant with IT portal, resulting the delay in filing first appeal. Further stating that the said delay was not intentional but due to circumstances beyond assessee's control. Learned CIT(A) was, however not satisfied with the aforesaid causes shown by the assessee and declined to condone the delay of said 812 days in filing the first appeal before him.

6. We take judicial notice of the fact that most of the duration of delay caused in filing appeal before the first appellate authority overlaps the period of spread of global pandemic COVID-19. This fact has also been taken case of by Hon'ble Supreme Court in Misc. app. No. 21/2022 in Misc. app No. 665/2021 in suo-moto W.P(c) No. 3/2020 in civil original jurisdiction and in re-cognizance of extension of limitation with miscellaneous application No. 29/2022, in miscellaneous application No. 655/2021 in suo-moto petition(c) no. 03/2020 and vide para 5(1) of its order dated 10.01.2022 directed that its order dated 23.03.2020 is restored and in continuation of the subsequent order dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings after exclusion of the aforesaid duration. Learned CIT(A) has still not condoned

the delay of remaining 265 days as stated in para 5 of the impugned order.

7. It is well established principle of law that the substantial justice cannot be denied on technical aberrations. In an adversial 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 can not to be followed. The un rebutted cause shown in affidavit filed on behalf of aforesaid CEO of the assessee appears to us to be sufficient. We hold that the delay has wrongly been refused to be condoned by learned CIT(A). We, accordingly condone the said delay in filing the first appeal before the first appellate authority.
8. In the result, the appeal is allowed. The impugned order dated 23.04.2024 is set aside. The delay in filing the first appeal before first appellant 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 appellate authority shall ensure the substantial compliance of the principles of natural justice.

Order pronounced on 26.08.2024

Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 26/08/2024
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