

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAIBEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 2195/MUM/2024

A.Y.2013-14

M/s KVR INFRA,
Add. G2, Room, No.4 Shri
Rani Sati Nagar CHSL S.V.
Road Malad (West)
Mumbai-400064

Vs.

Joint Commissioner of
Income Tax,
Range-30(2),
Mumbai

(Appellant)

(Respondent)

PAN

AAFK 3458Q

Assessee by

Ms. Poonam Kothari, Advocate

Revenue by

Shri P.D. Chougule (Addl. CIT,
Sr. (DR),

Date of hearing

21st August, 2024

Date of pronouncement

28th August 2024ORDERPER PRASHANT MAHARISHI, AM:

1. This appeal is filed by the M/s KVR INFRA (the assessee) against the appellate order passed by the National Faceless Appeal Centre (NFAC), Delhi for A.Y. 2013-14 dated 15.03.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) dated 08.03.2016 by the Joint



Commissioner of Income Tax, Range-30(2), Mumbai (the learned AO) was dismissed for statistical purposes.

2. The reason being that the appeal was filed late by 80 days whereas the Form No. 35, the assessee did not mention the delay in filing of the appeal and, therefore, the learned CIT(A) held that such appeal could not be admitted and same was dismissed for statistical purposes.
3. The assessee is aggrieved with that appeal raising several grounds.
4. The brief facts of the case shows that assessee is a Partnership Firm engaged in the business of hiring of cranes it filed return of income on 11.04.2014 at Rs.NIL. The return was picked up for scrutiny by issuing notice under Section 143(4) on 28.08.2015. It resulted into an assessment order determining the total income of the assessee at Rs. 6,41,42,450/- by assessment order dated 18.03.2016. The assessee challenged the same before the learned CIT(A) , but while filing Form No.35 the assessee submitted that this order was received on 23.03.2016, however, in Column No. 14, it was required to be mentioned whether there is delay in filing of the appeal or not, the assessee mentioned as "NO". Therefore, in Paragraph No. 15 no application for condonation of delay was made. In fact, the appeal was filed on 13.06.2016. The learned CIT(A) noted that the assessee should have filed this appeal on or before 20.04.2016 whereas the appeal was filed on 13.06.2016. In absence of any application for condonation of delay of 80 days, he dismissed the appeal without admitting the same.



5. After hearing the parties, we find that the appeal of the assessee is definitely filed late before the learned CIT(A) by 80 days. However, the assessee mentioned wrong information in Form No. 35 stating that there is no delay in filing of the appeal. Therefore, in fact there is no fault on the part of the learned CIT(A) in dismissing the appeal of the assessee as it did not contain the correct information about the delay in filing of the appeal as well as by making an application for condonation of delay. However, in the interest of justice, and to decide the issue on the merits of the case, the assessee must be given an opportunity to hear on the merit of the case subject to the fact that assessee makes an application before the learned CIT(A) for condonation of delay of 80 days by resubstituting the correct Form No.35. The learned CIT(A) thereafter may consider the application of the assessee for condonation of delay in accordance with the law. The onus would be on the assessee to substantiate sufficient cause for delay in filing of the above appeal. Therefore, the appeal of the assessee is restored back to the file of the learned CIT(A) with the above direction. If Id CIT (A) is convinced that the delay in filing of appeal is because of ' Sufficient cause" , it may be condoned and then appeal may be decided on its own merits.
6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28/08/2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.08.2024

Aks/-



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A Y : 2013-14

M/s KVR Infra

Versus

JCIT, Mumbai

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai