

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1114/Del/2023

निर्धारणवर्ष/Assessment Year: 2014-15

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| NOBLE STAR INC. 3/18/12, AT Crossing, Lakriwalan Road, Peergaib, Moradabad, Uttar Pradesh. | बनाम Vs. | ITO, Ward-1(1), Moradabad. |
| PAN No.AAJFN0790M | | |
| अपीलार्थी Appellant | | प्रत्यर्थी/Respondent |

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| निर्धारितकीओरसे /Assessee by | Shri Mayank Patawari, CA |
| राजस्वकीओरसे /Revenue by | Shri Om Parkash, Sr. DR |

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| सुनवाईकीतारीख/ Date of hearing: | 02.07.2024 |
| उद्घोषणाकीतारीख/ Pronouncement on | 29.08.2024 |

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 17/10/2022 for the AY 2014-15 in sustaining the order of the Assessing Officer in rejecting the books of account and estimating gross profit @ 7.30%.

2. The appeal is filed by the assessee with a delay of 122 days. Assessee filed petition for condonation of delay along with affidavit of the Authorized Representative of the assessee explaining the reason for delay. In the affidavit the Authorized Representative

deposed that assessee had handed over copy of the order of the Ld.CIT(A) for preparing and filing appeal before the Tribunal. However, due to severe cold season and also since the Authorized Representative was busy in preparing and filing replies in scrutiny assessment and other miscellaneous office works of various clients he has misplaced the order of the Ld.CIT(A) and therefore the appeal could not be filed in time. However, while screening the documents copy of the order was found in the records and immediately steps were taken to file the appeal with a delay of 122 days. In the petition for condonation of delay the assessee prays for condoning the delay as it was neither willful nor wanton but it was due to the mistake of the Authorized Representative. Placing reliance on the decision of the Hon'ble Supreme Court in the case of G. Ramegowda, Major Vs. Spl. Land Acquisition Officer, 1988 (2) SCC 142 it is submitted that the delay in filing occurred due to mistake of office staff of Counsel of the assessee is a reasonable cause for condoning the delay.

3. On hearing both the parties and perusing the condonation petition as well as the affidavit and the case laws relied on it is observed that the assessee has reasonable cause in not filing the appeal in time. The affidavit filed by the Authorized

Representative also proves that the delay in filing appeal is neither willful nor wanton. In the circumstances, the delay is condoned.

4. Coming to merits of the case, it is observed that the AO noticed that in the month of March 2014 assessee has shown purchases of Rs.88,84,394/- and sales at nil. The AO also observed that the closing stock as on 31.03.2014 was shown at Rs.22,81,725/-, therefore, the AO was of the view that since the assessee has shown nil sales in the month of March 2014 the closing stock could not have been less than the purchases made in the month of March i.e. Rs.88,84,394/-. Thus, the AO treated the difference as sales made outside the books of account. Accordingly, he rejected the books of account of the assessee and estimated the turnover as well as the gross profit at 7.30% and made an addition of Rs.21,33,115/-.

5. Assessee preferred an appeal before the Ld.CIT(A). Ld. Counsel for the assessee submits that the Ld.CIT(A)-NFAC by order dated 17.10.2022 disposed of the appeal of the assessee *ex parte* sustaining the order of the AO without giving sufficient opportunity to the assessee. Therefore, the Ld. Counsel submits that the matter may be restored to the file of the AO, wherein the assessee can be able to prove the discrepancies pointed out by the AO.

6. Ld. DR has no serious objection.
7. Considering the rival submissions, perusing the order of the Ld.CIT(A) it is noticed that the Ld.CIT(A) disposed of the appeal of the assessee without going into the merits of the case. The order is a cryptic order. Taking the totality of facts this appeal is restored to the file of the AO with a direction to pass a fresh order in accordance with law after giving adequate opportunity of being heard to the assessee.
8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29/08/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 29.08.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi