

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "J(SMC)", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.3258/M/2024
Assessment Year: 2017-18**

Ms. Darshana Maharshi Udeshi, B-1903, Rustomjee Riveria Marve Road, Malad (West), Mumbai – 400 064 PAN: AAOPU9261B	Vs.	Income Tax Officer, Ward-30(1)(3), 505, 5 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051 Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Dinesh A Chourasia, Sr. D.R.

Date of Hearing : 22 . 08 .2024
Date of Pronouncement : 30 . 08 .2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 18.10.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. Despite sending notice for the date of hearing on 22-08-2016, the Assessee neither appeared nor filed any adjournment application, hence, we are constrained to decide this appeal as ex-parte.

3. At the outset, we observe that there is a delay of 186 days in filing the instant appeal, on which the Assessee by filing an application for condonation of delay dated 20.06.2024 has submitted that though the Assessee on receipt of the impugned order immediately sent all the papers to his representative to pursue the matter further, however, the same has escaped attention of his representative and thereafter while filing yearly return in June 2024 one of Assessee's colleague informed the Assessee about the same, then only the Assessee came to know about the non-filing of the appeal and hence the delay occurred is on account of the Assessee's wrong belief that the appeal has been filed, however, the same has escaped the attention of earlier representative and therefore the appeal could not be filed within time, but after noting these facts, the Assessee immediately filed the instant appeal. As there was no malafide intention to delay the proceedings, but in fact the delay was on bonafide belief and therefore the delay in filing the instant appeal may kindly be condoned. On the contrary, the Ld. D.R. refuted the claim of the Assessee. We have given thoughtful considerations to the submissions made in the application for condonation of delay. Though the Assessee has not mentioned the name or designation of the representative and therefore the reason for condonation of delay seems to be bald statement, however, considering the peculiar facts and circumstances in totality as there is no material and/or reason contrary to the claim of the Assessee qua condonation of delay and therefore by considering the delay occurred as un-intentional and bonafide and taking lenient view, we are inclined to condone the delay of 186 days in filing the instant appeal. Thus, the delay is condoned.

4. Coming to the merits of the case, we observe that the AO vide assessment order dated 15.12.2019 has made the addition of Rs.17,22,504/- u/s 69A of the Act, which was challenged before the Ld. Commissioner by filing first appeal on 13.01.2020 and thereafter Covid-19 started. The Ld. Commissioner on dated 19.01.2021 issued 1st notice when the entire nation was on hold and thereafter on 29.09.2021 and thereafter after a gap of 02 Years on 31.07.2023 and 03.10.2023. The Assessee except making the request for adjournment on 31.07.2023, made no compliance and therefore the Ld. Commissioner considering non-compliance and finding extremely difficult to adjudicate for want of adequate submission, clarification and counter clarification, decided the appeal of the Assessee in limine. Considering the peculiar facts and circumstances in totality, as the Ld. Commissioner failed to decide the appeal filed by the Assessee on merit, for want of adequate submission, clarification and counter clarification and therefore for the just decision of the case and for substantial justice, we are inclined to set aside the impugned order and to remand the instant case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee. We clarify that in case of further default, the Assessee shall not be entitled for any leniency. **Thus,** the case is remanded to the file of Ld. Commissioner accordingly.

5. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30.08.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.