

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

**BEFORE: SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 3386/MUM/2024
(Assessment Year : 2010-11)**

Gajanan Motiram Patil Dwarka Bunglow Near Bank of Baroda, Lodha Heaven Nilje, Dombivli East, 421204.	Vs.	Income Tax Officer-3(2) Income Tax Department, 2 nd Floor, Rani Mansion, Murbad Road, Kalyan, 421301.
PAN/GIR No. AKYPP8657Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. Himanshu Gandhi
Revenue by	Shri. R. R. Makwana, Sr. DR
Date of Hearing	03/09/2024
Date of Pronouncement	03/09/2024

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 19.02.2024 passed in Appeal no. CIT(A), Thane-1/10571/2017-18 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.] 2010-11, wherein learned CIT(A) has

dismissed assessee's first appeal ex-parte upon rejection of assessee's prayer for condonation of delay.

2. The brief facts under appeal state that the assessee did not file return of income for A.Y. 2010-11. On the basis of the information received from ADIT(Inv.) vi(2), Thane, it was noticed that assessee, along with four Co-owners/family members sold immovable property situated at village Nilje, Kalyan district Thane to M/s. Lodha Developers Private Limited for the consideration of Rs. 1,05,06,772/-. Section 147 of the Act was invoked and notice u/s. 148 of the Act dated 31.03.2017 was issued to the assessee. Thereafter notice u/s. 142(1) of the Act dated 02.06.2017 was issued but for no avail. Thereafter show cause notices dated 08.08.2017 and 22.08.2017 were also issued but the assessee did not respond. The assessing officer carried out assessment u/s. 144 rws 147 of the Act and assessed total income of the assessee at Rs. 25,80,570/-. Assessee filed an appeal before learned CIT(A), who dismissed assessee's first appeal as ex-parte.
3. Assessee has filed this second appeal on the ground that learned CIT(A) has erred in confirming the addition of Rs. 25,87,570/- and in dismissing assessee's appeal ex-parte without affording an opportunity of hearing to the assessee. Further, submitted to condone the delay in filing this appeal.
4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.

5. We have perused the records and heard learned representatives for both the parties.
6. Learned AR has, at the very beginning, requested that the delay caused in filing this appeal on 28.06.2024 against the impugned order dated 19.02.2024 may be condoned. Further submitted that learned CIT(A) has erred in dismissing assessee's appeal ex-parte in violation of the principles of natural justice. Prayed to set aside impugned order.
7. Learned DR has supported the impugned order passed by the first appellate authority.
8. We notice that this appeal seems to have been filed before this Tribunal on 28.06.2024 against the impugned order dated 19.02.2024 by a delay of about 77 days. We have also gone through the affidavit filed on behalf of assessee Mr. Gajanan Patil showing the delay due to the terminal illness of his father in law. In the interest of justice, we condone the said delay in filing this second appeal.
9. Perusal of the impugned order shows that the assessee did not respond to the various notices issued by the first appellate authority. Learned CIT(A) was therefore compelled to pass ex-parte impugned order.
10. We find that the assessee did neither turn up before the first appellate authority nor before the assessing officer in response to the various notices, whereas the assessee as a law abiding citizen was expected under the law to respond to the calls of the authority below and make his submissions to obtain order on merit. However, in the interest of justice and

fair play, we deem it just and appropriate to afford last opportunity to the assessee and remit the matter back to the file of learned assessing officer for denovo adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the learned assessing officer for the expeditious and effective disposal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Needless to say that learned assessing officer shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observation on the merits of the case. The appeal is thus liable to be allowed.

11. In the result, the appeal is allowed. Impugned order dated 19.02.2024 and assessment order dated 31.08.2017 are set aside. The case is restored back to the file of the learned assessing officer for statistical purposes.

Order pronounced on 03.09.2024 in open court.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 03/09/2024
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