

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

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

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 1496/MUM/2024
(Assessment Year : 2011-12)**

Marudhar Stock Trading Private Limited 413-F, Vasant Wadi, Ground Floor, Office No. 4, Kalbadevi Road, Maharashtra, 400002.	Vs.	Assistant Director of Income Tax CPC, Post Bag No 2, Electronic City Post Office, Karnataka, 460100.
PAN/GIR No. AAECM0643A		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri. R. R. Makwana, Sr. DR
Date of Hearing	05/09/2024
Date of Pronouncement	11/09/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 29.01.2024 passed in Appeal no. NFAC/2010-11/10243128 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 2011-12, wherein learned CIT(A) has dismissed assessee's appeal upon rejection of its prayer for the condonation of delay.

2. The brief facts speak that the assessee, e-filed return of income for A.Y. 2011-12 on 29.09.2011, declaring total loss of Rs. 69,089/-, which was processed u/s. 143(1) of the Act & an adjustment of Rs. 1109420/- was made vide intimation u/s. 143(1) dated 20.01.2012.
3. Aggrieved by the assessment order, assessee filed first appeal, which was dismissed by learned CIT(A) upon rejection of assessee's prayer for the condonation of delay of 3712 days.
4. Aggrieved by the impugned order, assessee has filed this second appeal on the ground that learned CIT(A) has erred in dismissing the appeal by treating no sufficient cause for the condonation of delay.
5. None responded for the appellant. Heard learned DR and perused the material available on record.
6. Learned DR has supported the impugned order.
7. We notice that the appellant assessee did neither appear today nor prior here to, keeping the nature of proceedings in view, we proceed to decide on merit.
8. Perusal of the impugned order discloses that Mr. Sanjay Jain, director of the assessee, filed an affidavit before the first appellate authority stating that intimation u/s. 143(1) dated 20.01.2012 was not received. Appellant received e-mail from the Income Tax Department on 16.02.2023 in respect of outstanding demand of Rs. 3,75,875/- for the A.Y. 2011-12. Subsequent upon the receipt of e-mail, appellant's CA Mr. Sushil Modi sent a request to CPC for the grant of copy of intimation u/s. 143(1) to ascertain the reasons for the outstanding demand, which was received by the appellant only on 22.02.2023. Due to this reason the delay of 3712 days was caused.

9. It is pertinent to mention that the first appeal was instituted on 24.04.2023. 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. In the instant case, learned CIT(A) was not satisfied to condone the said delay in filing the first appeal on 24.04.2023 against the intimation order u/s. 143(3) dated 20.01.2012.
10. Hon'ble Supreme Court in Sambhaji and Ors V Gangabai and Ors, Civil Appeal no. 6731/2008 (arising out of SLP(C) No. 14562 of 2006) vide judgment dated 20.11.2008, has held that the object of prescribing procedure is to advance the cause of justice. In an adversial justice system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extra ordinary situations in the ends of justice. Justice is the goal of jurisprudence. Procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Processual law is not to be tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, lubricant, not a resistance in the administration of justice.
11. In the instant case the deponent's affidavit in respect of the receipt of intimation on 22.02.2023, being un rebutted, deserves to be treated as bonafide-cum-sufficient cause. We accordingly deem it just and

proper, with a view to advance the cause of justice, condone the said delay of 3712 days with a condition that appellant assessee shall make payment of cost of Rs. 10,000/- in the Prime Minister's National Relief Fund account within 30 days from the date of communication of this order to the appellant assessee and shall file the copy of the receipt before the first appellate authority. The said delay is accordingly condoned on payment of cost in above terms.

12. In the result, the appeal is allowed. The impugned order dated 29.01.2024 is set aside. The delay in filing the first appeal before first appellant authority i.e learned CIT(A) stands condoned as stated above. 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 11.09.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 11/09/2024
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