

**IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.**

**Before Ms. Madhumita Roy, Judicial Member, &
Smt. Renu Jauhri, Accountant Member**

**I.T.A. No. 3484/Mum/2024
(A.Y. 2022-23)**

Mohammedi Baitulmal 2/147, Rita Villa, Near Vakola Masjid St. Anthony Street, Vakola Santacruz (East), Mumbai. PAN : AADTM 0202D (Appellant)	Vs.	Income Tax Officer- 23(2)(1), Mumbai (Respondent)
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Assessee by	Shri S C Agrawal, CA
Department by	Shri R.R. Makwana, (Sr. DR)
Date of Hearing	10.09.2024
Date of Pronouncement	11.09.2024

ORDER

PER MADHUMITA ROY, (JM) :

The instant appeal filed by the assessee is directed against the order dated 09.05.2024 passed by the Commissioner of Income Tax (Appeal), ADDL/JCIT (A)- Chandigarh ('CIT(A)' in short), under Section 143(1) of the Income Tax, Act, 1961 (hereinafter referred to as 'the Act') arising out of the order dated 01.09.2023 passed by the AO under Section 143(1) of the Act for Assessment Year 2022-23.

2. The brief facts leading to the case are that the appeal has been filed by the assessee before the First Appellate Authority on 06.12.2023 against the intimation issued under Section 143(1) of the Act dated 01.09.2023, which is barred by limitation for 66 days. The reason for such delay has been mentioned before the First Appellate Authority by

the assessee, which is reflecting in Form 35 as 'the Trustee was ill'. Such explanation rendered by the assessee was not found acceptable in the absence of day to day explanation for delay. Moreso, no documentary evidence was filed in support of such plea taken by the assessee. Hence, the delay was not condoned.

3. Being aggrieved by, and / or dissatisfied with, the said order of the Ld. CIT(A), the instant appeal is preferred before us by the assessee. At the time of hearing of the matter, the ld. counsel appearing for the assessee has drawn our attention to an affidavit affirmed by one Mr. Shaukat Ali Ghorji, the Managing Trustee of Mohammedi Baitulmal, the assessee before us, explaining the reason for such delay in preferring the appeal before the First Appellate Authority. It has been pleaded that Mr. Ghorji during that material point of time when the appeal was supposed to be filed was not keeping good health and therefore, not been able to take proper steps to file the appeal in time. Such delay was, thus, unintentional and the reason was totally beyond control of the assessee. Further that as the matter on merit requires to be decided, the delay should be condoned by taking a pragmatic view in the matter as contended by him. The Ld. counsel for the assessee has drawn attention to the documents submitted before us in support of poor health condition of the deponent of such affidavit wherefrom it appears that Mr. Ghorji was initially treated by the medical practitioner on 14.10.2023, which continued for long. The medical examination reports including the echocardiography report filed by the assessee reveals that Mr. Ghorji was suffering from Type 1 Left Ventricular Diastolic Dysfunction (LVDD) which suggests the plea taken by the assessee was genuine. In view of this particular aspect of the matter, the Ld. AR prays for condonation of delay in preferring the appeal before the ld. CIT(A). 'Sufficient cause'

since has been able to be demonstrated by the Ld. AR, it has been prayed for setting aside the issue for adjudication on merit to the file of the Ld. CIT(A) upon condonation of delay by us. Such prayer made by the Ld. AR has not been objected by the Ld. DR with all his fairness.

4. Having heard the ld. counsel appearing for the parties, having regard to the facts and circumstances of the case, particularly the evidences in support of the delay including the medical examination reports of Mr. Ghorl, we find sufficient cause has been shown by the assessee, for late filing of appeal. The same is found to be unintentional. We, therefore, condone the delay. So far as the merit is concerned, we find the assessee be given a further opportunity of being heard by the Ld. CIT(A) as the same has not been adjudicated upon.

5. We, therefore, with the aforesaid observation remitting the issue to the file of the Ld. CIT(A) to consider the same afresh upon providing an opportunity of being heard to the assessee and upon considering the evidence on record or any other evidences which the assessee may choose to file at the time of hearing of the matter. The Ld. CIT(A) is further requested to pass a reasoned order.

6. In the result, the appeal preferred by the assessee, is, thus, allowed for statistical purposes.

Order pronounced in the open court on 11.09.2024

Sd/-
[RENU JAUHRI]
ACCOUNTANT MEMBER

Sd/-
[MADHUMITA ROY]
JUDICIAL MEMBER

MUMBAI, DATED: 11/09/2024