

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No.	A.Y.	Appellant	Respondent
2739/Mum/2024	2013-14	Mangesh Sawant, A/004, Prathamesh Horizon, New MHB Colony, Gorai, Borivali (West) Mumbai	Deputy Commissioner of Income Tax, Circle-42(1)(1), Kautilya Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai
2740/Mum/2024	2008-09	PAN: AAGPS0518M	

For Assessee :	Mr. Poojan Mehta
For Revenue :	Smt. Sanyogita Nagpal, CIT-DR

Date of Hearing :	06-08-2024
Date of Pronouncement :	13-09-2024

ORDER

PER OM PRAKASH KANT, A.M :

These appeals by the assessee are directed against separate orders dt. 11-04-2024 & 21-03-2024, passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Ld.CIT(A)] for the Assessment Years (AYs.) 2013-14 & 2008-09 respectively. Both these appeals are in relation to penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act'), levied by the Assessing Officer (AO), which have been further upheld by the Ld.CIT(A).

2. Before us, the learned counsel for the assessee submitted that both these appeals have been passed *ex-parte* for the assessee and, therefore, same should be set aside and restored back to the file of the Ld.CIT(A) for deciding afresh.

3. We have heard rival submissions of the parties on the issue in dispute raised by the assessee in the grounds, particularly Ground No. 2 of the appeals. We find that the Ld.CIT(A) has rejected the appeals as the reasons stated by the assessee for condoning the delay were not satisfactory. We further note that the assessee did not appear before the AO also and even not responded to the notices issued for the penalty for non-attendance before the AO. The assessee has also not responded before the Ld.CIT(A). Before us, the learned counsel for the assessee submitted that delay in filing the appeals before the Ld.CIT(A) was on account of order of the AO placed in a separate drawer by the accountant of the authorized representative of the assessee, which came to knowledge of the authorized representative after expiry of the date of filing of appeal. Thus, it evident the delay is attributed to the negligence on the part of the authorised representative, however, we are of the view that right to appeal being a statutory right of the assessee, which should not be denied due to any negligence on the part of the authorized representative of the assessee and let the matter be decided on merit. In the facts and circumstances and in the interest of justice, we feel it appropriate to set aside the orders of the Ld.CIT(A) and restore the matter back to the files of the Ld.CIT(A), subject to a cost of Rs. 5,000/- (Rupees Five Thousand only) each in both the appeals, which shall be deposited into the Prime Minister's Relief Fund, within sixty days from the date of receipt of this order. Ground No.2 in both the appeals is accordingly allowed.

4. Since we have already restored the appeals of the assessee to the files of the Ld.CIT(A), remaining grounds rendered are merely academic and, therefore, we are not required to be adjudicated at this stage.

5. In the result, both the appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on 13th September, 2024

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai,

Date : 13-09-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai