



the Assessing Officer (AO) on merits, is also contending the decision of the CIT(A) in not condoning the delay and dismissing the appeal in limine.

2. The assessee is a company engaged in education services. The assessee filed the return of income for AY 2019-20 on 31.10.2019 declaring a total income of Rs. 79,68,640/-. The assessee filed the return of income for AY 2020-21 on 15.02.2021 declaring a loss of Rs. 4,08,87,946/-. The returns for both the AYs were processed under section 143(1) by CPC, Bangalore wherein various disallowances / additions were made. Accordingly, the income for AY 2019-20 was revised to Rs. 4,13,47,976/- and for AY 2020-21 the loss was reduced to Rs. 3,55,26,690/-. Aggrieved the assessee filed further appeal before the CIT(A). There was a delay in filing the appeals before the CIT(A) for both the AYs. The CIT(A) did not condone the delay and dismissed the appeal for both the AYs accordingly. Aggrieved the assessee is in appeal before the Tribunal.

3. There is a delay of five days in filing the appeal for AY 2020-21 before the Tribunal and the assessee filed an affidavit requesting for condonation of delay stating that there is a change in the tax consultant of the assessee and hence the delay.

4. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST. Katiji & Ors., (167 ITR 471) (SC), we condone the delay of five days in filing the appeal and admit the appeal for adjudication.

5. The Id. AR submitted that the intimation under section 143(1) was passed during the peak of Covid period and hence the assessee was not checking the emails through which the intimation was sent. The Id. AR further submitted that the assessee is running Kinder Garden Schools which were closed for two years due to Covid and the office was also not functioning. The Id. AR also submitted that the intimations received through email were not noticed by the assessee until 2023 and therefore the delay in filing the appeal before the CIT(A). It is submitted that the CIT(A) did not accept the submissions of the assessee with regard to delay in filing the appeal and without condoning the delay dismissed the appeal. The Id. AR therefore, prayed that considering the facts the appeal may be remitted back to the CIT(A) with a direction to condone the delay.

6. We heard the Id. DR. We notice that the return of the assessee for AY 2019-20 and 2020-21 were processed under section 143(1) of the Act vide intimations dated 10.05.2020 for AY 2019-20 and 08.12.2021 for AY 2020-21. The assessee filed the appeal before the CIT(A) on 24.05.2023 for both AY 2019-20 & 2020-21 with considerable delay. We notice that the assessee prayed for condonation of delay before the CIT(A) stating that due to Covid, the office remained closed and that the online communication of the intimation were not noticed due to change in staff. However, the CIT(A) did not condone the delay and dismissed the appeal for both the AYs in limine. The assessee filed an affidavit before us reiterating the reasons for delay in filing the appeal before the CIT(A). The Id. AR submitted that the various additions made in the intimation under section 143(1) of the Act are arising out of the incorrect adjustments alleging that the amount to be disallowed as per the Tax Audit Report (TAR) are not disallowed in the computation of income. It is a settled position that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice

deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non deliberate delay. Considering the facts peculiar to the appeals before us, we are convinced that the assessee has not willfully delayed in filing the appeal before the CIT(A) and that there is a reasonable cause for the delay. Therefore, we are remitting both the appeals back to the CIT(A) with a direction to condone the delay and consider the issues contended before him on merit. The assessee is directed to furnish the relevant details as may be called for by the CIT(A) without seeking adjournments and co-operate with the appellate proceedings. It is ordered accordingly.

7. In the result, the appeals of the assessee for AY 2019-20 and 2020-21 are allowed for statistical purposes.

*Order pronounced in the open court on 06-09-2024.*

*Sd/-*  
**(KAVITHA RAJAGOPAL)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**