

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3662/M/2024
Assessment Year: 2010-11**

Shri Shailesh Kantilal Shah, 503, Dharam Palace, Hughes Road, Gamdevi, Mumbai- 400 007 Maharashtra PAN: AAFPS5517F	Vs.	Income Tax Officer- Ward 19(3)(1), Piramal Chambers, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Dinkle H. Hariya, A.R.
Revenue by : Smt. Sujatha P. Iyengar, Sr. A.R.

Date of Hearing : 05 . 09 .2024
Date of Pronouncement : 16 . 09 .2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 21.06.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2010-11.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 28.03.2016 u/s 271(1)(c) of the Act has levied a penalty of Rs.36,41,491/- being 100% of the amount of tax sought to be evaded on the income of Rs.1,17,84,759/-. The Assessee, being aggrieved, challenged the levy of penalty before the Ld. Commissioner by filing first appeal, however, in spite of affording various opportunities by issuing notices/letters dated 19.04.2024, 01.05.2024, 22.05.2024 and 11.06.2024 by the Ld. Commissioner, made no compliance. Therefore the Ld. Commissioner by observing *“that there was a delay in filing the appeal before him, he vide notice dated 11.06.2024 has asked the Assessee to file his explanation regarding delay in filing the appeal with any condonation petition but no compliance is received from the Assessee till date. Since the Assessee has filed the appeal in contravention of section 249 of the Act and unable to state sufficient cause for not presenting his appeal along with statutory requirements”*, treated the appeal of the Assessee as non-admissible and consequently rejected the same.

3. The Assessee, being aggrieved, is in appeal before us. The Assessee at the outset has submitted that the previous tax consultant of the Assessee has died unfortunately therefore, the case before the Ld. Commissioner remained un-represented, hence, considering the peculiar facts and circumstances in entirety and taking a lenient view for the ends of substantial justice an opportunity may be given to the Assessee by remanding the case to the file of Ld. Commissioner for decision afresh.

4. On the contrary, the Ld. D.R. refuted the claim of the Assessee.

5. Having heard the parties and perused the material available on record and given thoughtful considerations to the peculiar facts and circumstances of the case, we observe that the Assessee remained un-represented before the Ld. Commissioner and in spite of giving opportunity specifically for filing a condonation petition, the Assessee failed to do so because of the death of his previous tax consultant. By considering the statement of Ld. Counsel Ms. Dinkle H. Hariya at bar as correct and considering the peculiar facts and circumstances in totality and for just decision of the case and for the substantial justice, we are inclined to afford one more opportunity to the Assessee to substantiate his claim before the Ld. Commissioner and consequently remanding the instant case to the file of the Ld. Commissioner with a direction to afford an opportunity to the Assessee for filing the condonation of application and for substantiation of his claim. We clarify that in case of subsequent default, the Assessee shall not be entitled for any leniency. Thus, the case is remanded to the file of the Ld. Commissioner accordingly.

6. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 16.09.2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.