

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**I.T.A. No.2817/Mum/2024**  
**Assessment Year: 2010-11**

<b>Samir Arvind Thakker</b> 601-A, Tolaram Apts Tolaram Soc., Chembur Colony, Chembur Mumbai - 400071 <b>[PAN: ACPPT6825R]</b>	Vs	<b>DCIT, Circle-27(3), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Ravindra Poojary, A/R
Revenue by :	Shri Ajay Kumar Singh, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 19/09/2024

घोषणा की तारीख/Date of Pronouncement: 25/09/2024

**आदेश/O R D E R**

**PER NARENDRA KUMAR BILLAIYA, AM:**

This appeal by the assessee is preferred against the order dated 31/03/2024 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2010-11.

2. The grievance of the assessee reads as under :-

*"1. The Learned CIT(A) erred on facts, in law and under the circumstances in failing to condone the delay in filing the appeal on frivolous and vexations grounds.*

*2. The Learned CIT(A) further erred in failing to take notice of grounds on which the AO has reopened the case and grounds on which the addition is made in the assessment order which is evident from reading of the assessment order and consequently failed to held that the reopening is bad in law.*

*3. The appellant submit that the delay in filing the appeal before CIT(A) should be condoned, the reopening should be held as bad in law and otherwise the addition made of Rs. 1,15,00,000/- should be held as bad in law on merits of the case.*

4. *On the facts of the case, in law and under the circumstances, the Ld. CIT(A) erred in confirming the additions of Rs. 1,15,00,000/- on account of unexplained expenditure u/s. 69C without providing the break-up and the nature of the expenditure etc. which in his opinion is unexplained.*

5. *The Assessee craves leave to add, amend, alter or delete any or all the above grounds of appeal."*

3. Briefly stated the facts of the case are that the appeal before the Id. CIT(A) was barred by limitation by 1172 days. The assessee filed an affidavit stating the facts which were the cause for the delay. Though the Id. CIT(A) considered the request for condonation of delay but did not accept the contentions of the assessee and dismissed the appeal as not maintainable.

3.1. Before us, the Id. Counsel for the assessee reiterated what has been stated before the Id. CIT(A) and once again took us through the facts and pointed out that there was no *malafide* intentions in not filing the appeal on time and the reasons for filing the appeal beyond the period of limitation was not in the hands of the assessee and the assessee has gained nothing by filing the appeal late. Therefore, the matter should be sent back to the Id. CIT(A) to be decided on the merits of the case.

3.2. Per contra the Id. D/R strongly supported the order of the Id. CIT(A).

4. We have given a thoughtful consideration to the orders of the authorities below. We have also carefully perused the contents of the affidavit. We are reminded of the observations of the Hon'ble Supreme Court in the case of *Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC)* wherein the Hon'ble Court has laid down that ordinarily a litigant does not stand to benefit by lodging the appeal late.

3

The Hon'ble Apex Court further observed that refusing to condone the delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a case can be decided on merits after hearing the parties.

5. In line with the observations of the Hon'ble Supreme Court (*supra*), we are of the considered view that if the First Appellate Authority decides the appeal on merits after hearing the parties, it would save grave injustice to the assessee. Therefore, in the interest of justice and fair play, we restore the issues to the file of the Id. CIT(A) with a direction to decide the appeal on merits of the case after affording a reasonable and adequate opportunity of being heard to assessee.

6. In the result, appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 25<sup>th</sup> September, 2024 at Mumbai.**

*Sd/-*  
**(RAHUL CHAUDHARY)**  
JUDICIAL MEMBER

*Sd/-*  
**(NARENDRAKUMARBILLAIYA)**  
ACCOUNTANTMEMBER

Mumbai, Dated 25/09/2024

*\*SC S.P.*

4

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. संबंधितआयकरआयुक्त/ Concerned Pr. CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्डफाई/Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकरअपीलीयअधिकरण  
ITAT, Mumbai