

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 764/MUM/2024
(Assessment Year: 2016-17)**

**Robinson Memorial Methodist Marathi
Central Church,**

13, Shaikh Hafizuddin Marg,
Sankhli Street, Byculla, Mumbai-400008.
[PAN: AAATR2674K]

..... **Appellant**

Vs

Income Tax Officer, Exem.Ward2(2)

Piramal Chambers, Lalbaug,
Mumbai- 400012.

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Anuj Kisanadwala
For the Respondent/Department : Shri R.R. Makwana

Date

Conclusion of hearing : 09.07.2024
Pronouncement of order : 27.09.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 21/06/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] whereby the Ld. CIT(A) had dismissed the appeal preferred by the Assessee against the Intimation Order, dated 02/01/2019, passed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**'). for the Assessment Year 2016-17.
2. We have heard the parties, perused the material on record and considered the rival submission.
3. There was delay of 184 days in filing the present appeal. In the Application seeking condonation of delay, it has been stated as

under:

- "2. *The assessee, in Form no. 35, had given the e-mail Mrs. Sarita Nawalkar, Treasurer of Robinson Memorial Methodist Marathi Central Church. However, the order passed by CIT(A)-NFAC was not received on her e-mail id, hence, she was not aware that the CIT(A)- NFAC had disposed off the appeal filed by the assessee. Mrs. Sarita Nawalkar was not regularly checking the ITBA portal of the assessee on the Income tax website as a result the order passed by CIT(A)-NFAC dated 21.06.2023 which was uploaded on the ITBA portal of the assessee was not known. Ms. Sarita Nawalkar was of the belief that any communication from the Income-tax department would be received on her e-mail id asha.sarital@gmail.com since the same was given in Form No. 35.*
4. *The Chartered Accountant of the assesses, in the second week of February 2024, inquired about the status of the appeal filed before the CIT(A) Mrs. Asha Sarita informed the Chartered Accountant there is no communication from the Income-tax department on her e-mail id given in Form No.35. The Chartered Accountant asked her to check the ITBA portal. On logging in to the ITBA portal, it was noticed that the CIT(A)-NFAC, vide order dated 21.06.2023, had already disposed of the appeal filed by the assessee.*
4. *Upon noticing this fact, she immediately informed the Chartered Accountant who advised her that an appeal should be filed before the Hon'ble Tribunal. The appeal was prepared by Chartered Accountant and filed before the Hon'ble Tribunal on 20.02.2024.*
5. *For the reasons stated hereinabove, there is a delay of 184 days in filing the present appeal which, however, was not due to any malafide or deliberate act on the part of the assessee but for the reasons explained hereinabove. In the premises, it is submitted that this is a fit case for condonation of the delay. If this humble prayer is not acceded to, it would also result in discrediting an otherwise meritorious case for no fault of the taxpayer. An affidavit of Ms. Asha Sarita, Treasurer of assessee trust, in support of the statements made in this application is enclosed and marked as Annexure- A".*
5. In the case of **Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC)**, the Hon'ble Supreme Court has emphasized that substantial justice should prevail over technical considerations and held that the requirement that every day's delay must be explained does not

mean that a pedantic approach should be taken. According to the Hon'ble Supreme Court the aforesaid doctrine must be applied in a rational common sense and in pragmatic manner, and more so in circumstances where a litigant does not stand to benefit by lodging the appeal late. In the present case we are of the view that the Appellant had explained the reason for delay in filing appeal. We have no reasons to doubt the bonafides of the explanation offered by the Appellant in application seeking condonation of delay which is supported by sworn affidavit. It has been submitted that the factum of passing of the order of the CIT(A) came to knowledge of the concerned person after some delay. Accordingly, we hold that the Appellant was prevented by reasonable cause by filing appeal before the Tribunal within the prescribed time. In view of the aforesaid, the delay of 184 days in filing the present Appeal is condoned.

6. On perusal of the order passed by the CIT(A) we find that the Appellant had challenged Intimation Order, dated 02/01/2019, passed under Section 143(1) of the Act whereby the taxable income of the Appellant was computed at INR 41,56,267/-. Before the CIT(A), the Appellant had claimed that gross collection of INR 41,56,267/- could not be brought to the tax in the hands of the Appellant for the reason that (a) the Appellant was entitled to claim exemption under Section 11 of the Act and (b) Appellant had spent INR 39,71,795/- as expenses on normal running of church, for payment of salaries, electricity charges etc., which should have been allowed as deduction from the aforesaid collection of INR 41,56,267/-. Thus, without prejudice to the contentions of the Appellant that voluntary donation and interest income were not liable to tax in the hands of the Appellant, the Assessing Officer have only brought net surplus of INR 1,84,472/- in the hands of the Appellant. It has been contended on behalf of the Appellant that the alternative plea taken by the Appellant has

not been adjudicated by the CIT(A). It was further submitted that the CIT(A) rejected primary contentions of the Appellant by placing reliance upon Circular number 10/2019 dated 22/05/2019 and Circular number 28/2019 dated 27/09/2019 issued by the Central Board of Direct Taxes, which was not applicable to the Appellant. On perusal of the order impugned we find that the CIT(A) has not adjudicated upon the alternative plea raised by the Appellant. Keeping in view of overall facts and circumstances of the present case, we deem it proper to set aside the Order, dated 21/06/2023, passed by the CIT(A) and restore the issue raised in the present Appeal back to the file of the CIT(A) for the adjudication as per law. The CIT(A) is directed to decide the Appeal afresh after granting an opportunity of being heard to the Appellant. The Appellant is directed to furnish before the CIT(A) submissions/ documents in support of its claim. It is clarified that in case the Appellant failed to enter appearance before the CIT(A) or failed to furnish relevant details/submissions, the CIT(A) would be at liberty to decide the grounds raised in appeal on merits upon the material already on record.

7. The present Appeal is treated as allowed for statistical purpose in terms of paragraph 6 above.

Order pronounced on 27.09.2024.

Sd/-
(Narnedra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.09.2024
Y.S.Patil, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai