

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD  
BEFORE DR. BRR KUMAR ACCOUNTANT MEMBER**

**ITA No.1187/Ahd/2024  
Asstt.Year : 2012-13**

Mr.Priteshkumar Rameshbhai Maniar 204/1/2 Parekh Aluminex Ltd. Near Dabra Check Post Dadra 396 193 PAN : ABLPM 3509 N	Vs	The ITO, Ward-1 Mehsana.
---	----	--------------------------------

<b>(Applicant)</b>		<b>(Responent)</b>
--------------------	--	--------------------

Assessee by :	Shri Vipul Joshi, Advocate
Revenue by :	Shri Ravindra, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : 07/10/2024  
घोषणा की तारीख /**Date of Pronouncement**: 07/10/2024

**आदेश/ORDER**

This is assessee's appeal against the order of the Id.Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi dated 16.03.2024 for the Asst.Year 2012-13 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short).

3. In the appeal, the assessee besides challenging the various additions as set out in the grounds of appeals, the assessee primary challenged ex parte order by the Revenue authorities without giving proper opportunity of hearing to the assessee.

4. The Id.counsel for the assessee submitted that the appeal was filed before the ITAT Mumbai initially, and thereafter on transfer the appeal has been filed has been filed before the ITAT, Ahmedabad and hence, there was a delay of 3 days, the same is being condoned.

5. The ld.counsel submitted that the order of the ld.CIT(A) is ex parte and dismissed the appeal of the assessee due to the delay in filing the appeal before the ld.CIT(A). The observation of the ld.CIT(A) given at para 3.4 as under:

*“3.4. In the present case, the appellant has not adduced any reasonable cause which prevented it from filing the appeal for 893 days. From the facts of the case it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s. 249(3) of the Act. Thus, it is clearly a case of lapse and is a direct result of deliberate inaction on the part of the appellant. Respectfully following the ratio in the decisions of the Hon’ble Supreme Court supra, delay of 893 days in filing of appeal is not condoned. In view of the above, the delay of 893 days in filing of appeal in this case is not condoned as no "sufficient cause" has been shown under section 249(3) of the Income Tax Act for the appellants failure to file the appeal within prescribed period of limitation u/s 249(2) of the Act r.w.s 5 of the Limitation Act. Since, the delay in filing of appeal has not been condoned, consequently the appeal of the appellant becomes non-est and therefore the same is not admitted. \**

Since the order is ex parte, it is a fit case to send the matter back to first appellate authority for adjudication.

I make it clear that no opinion has been expressed on condonation of delay in filing of the before the ld.CIT(A).

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Dictated on the Open Court, typed and pronounced on 7<sup>th</sup> October, 2024.

Copy of this order be given to the assessee. The Registry is directed to dispatch as per procedure.

**Sd/-**  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 07/10/2024