

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3943/Mum/2024
Assessment Year: 2017-18**

Atul Raj Builders Private Limited		ITO, Ward-9(1)(4), Mumbai
106 Shree Amba Shanti Chambers, Opp. Hotel Leela Andheri East, Mumbai-400059.	Vs.	
PAN: AABCA 7938 D		
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dalpat Shah
Revenue by : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 11.09.2024
Date of Pronouncement : 25.10.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 11.07.2024 passed by the Id. Commissioner of Income-tax (Appeal), ADDL/JCIT(A)-9, Delhi. The assessee has raised the following grounds of appeal:

"1 Rejection of Condonation of delay in filing of Appeal by 28 days U/S 249(3) of the Income Tax Act, 1961 (the Act)

1.1 On the facts and circumstances of the case and in Law, the Addl./Jt. C.I.T. (Appeal) -9, Delhi, under National Faceless Appeal Centre (NFAC) erred in rejecting the application for condonation of delay in filling of the appeal before him with a delay of merely 28 days on the ground that 'no sufficient cause' is made out ignoring the fact that the Appellant had explained the genuine and bonafide reason of filing the appeal on 23.08.2019 on the basis of receipt of physical copy of assessment order U/S 143(3) dated 26.06.2019 on 27.07.2019 and accordingly there was

no delay in filing of said appeal. The rejection of the appeal is arbitrary, unreasonable, and against the principles of natural justice.

1.2 The said C.I.T. (Appeal) erred in not considering the fact that there was a bonafide reason of delay in filing of said appeal before him by merely 28 days from the date of order and there was no delay in filing of the said appeal from the date of receipt of the order U/sec 143(3) and therefore, the appellant prays that the delay in filing of the said appeal from the date of order may be condoned and may be restored back to the file of CIT(Appeal) for fresh hearing in the interest of natural justice to the Appellant.

.13 The delay of 28 days is a small and insignificant delay, which should have been condoned by the CIT(A) in the interest of justice. The delay did not prejudice the revenue in any way.

1.4 The rejection of the appeal on the grounds of delay has denied the appellant an opportunity to present its case on merits. This has caused irreparable harm to the appellant.

WITHOUT PREJUDICE ON MERIT

2 Confirmation of disallowances of Expenses of Rs.16,51,519/- u/s 37 of the Act

On the facts and circumstances of the case and in Law and on the basis of the rejection of the condonation of delay in filing of appeal, the said CIT(A) erred in confirming the addition of Rs. 16,51,519/- U/S 37 which were disallowed on ad-hoc basis and without any justification.

3. The appellant craves leaves to add, amend, alter, modify, delete and/or change all or any of the above grounds on or before the date of hearing.”

2. Fact in brief is that assessment u/s 143(3) of the Act was finalized on 26.09.2019 after making disallowance of various expenses debited to the profit & loss account to the amount of Rs. 16,51,519/-.

3. The assessee filed appeal before the ld. CIT(A). There was delay of 26 days in filing the appeal before the ld. CIT(A). The ld.

CIT(A) has dismissed the appeal of the assessee without condoning the delay in filing the appeal.

4. During the course of appellate proceedings before us, the ld. Counsel submitted that ld. CIT(A) has rejected the delay in filing the appeal without considering the request for condonation of delay.

5. Heard both the sides and perused the material on record. The ld. CIT(A) has dismissed the appeal of the assessee without adjudicating on merit by not condoning the delay of 26 days in filing the appeal. During the course of appellate proceedings before us, the ld. Counsel brought to our notice that actually the date of assessment order was passed on 26th June, 2019 however, the same was not received in the registered e-mail ID of the assessee. Thereafter, the assessee had received physical copy of the assessment order on 27.07.2019 and filed appeal before the ld. CIT(A) on 23.08.2019. After considering the submission of the assessee as referred above, we consider that there is bona fide reason for marginal delay of 26 days in filing the appeal before the ld. CIT(A). Therefore, we condone the delay of filing the appeal before the ld. CIT(A). Accordingly, the case is restored to the file of the ld. CIT(A) for adjudicating on merit as contemplate u/s 250(6) of the Act after providing 3 more opportunities of hearing to the assessee. The assessee is also directed to make due compliance before the ld. CIT(A) without any failure and update the changes if any in the e-mail ID immediately before the Income Tax Authority.

Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 25.10.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 25.10.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai