

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.4408/M/2024
Assessment Year: 2022-23**

IEI Shareholding Medical Benefit Trust Ion House, Dr. E. Moses Road, Mahalaxmi, Mumbai - 400011 PAN: AAATI0115N (Appellant)	Vs.	ITO Ward 22(2)(1) Piramal Chambers, Lalbaug, Mumbai (Respondent)
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Present for:

Assessee by : Shri Motichand Gupta, Ld. AR
Revenue by : Shri Asif Karmali, Sr. D.R

Date of Hearing : 15.10.2024
Date of Pronouncement : 23.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 05.01.2024, 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. 2022-23.

2. In this case, the CPC vide intimation/order dated 16.03.2023 processed the return filed by the Assessee u/s 143(1) of the Act and computed the tax liability at MMR as per section 156B of the Act and determined the tax liability at Rs.1,39,546/- of the Assessee by adding a surcharge @ 37% on dividend income, as against the surcharge @ 15% as added by the Assessee trust. The Assessee trust was under the impression that order passed by the CPC is correct and has not committed any error in computing the Assessee's tax liability. However, later on

the professional advice on the correct legal position of law and upon realizing that the demand raised by the CPC is illegal, the Assessee preferred first appeal before the Ld. Commissioner but with a delay of 265 days.

3. The Ld. Commissioner though considered the application for delay filed by the Assessee, however, by holding that the Assessee trust has failed to show the sufficient cause for not filing the appeal within limitation period and also failed to explain the delay, ultimately dismissed the appeal in limine and without going into the merits of the case.

4. The Assessee trust, being aggrieved, is in appeal before us. The Assessee trust before us admitted its fault for the delay and submitted that as per the provisions of the Act as applicable to the Assessee trust, the surcharge is supposed to be levied @ 15% of the dividend income, as against @ 37% as determined and levied by the Assessing Officer (AO).

5. We have given thoughtful considerations to the peculiar facts and circumstances of the case. There appears to be misunderstanding the relevant provisions of law and/or improper guidance, which resulted into delay of 265 days in filing of the appeal before the Ld. Commissioner. The Assessee trust by admitting its fault and demonstrating the reasons as noted by us above, though justified the delay, however, the Ld. Commissioner held contrary to the claim of the Assessee. Thus, considering the peculiar facts and circumstances in totality and for the just decision of the case and substantial justice, we are inclined to condone the delay of 265 days in filing the appeal before the Ld. Commissioner, consequently the delay is condoned and the case is remanded to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the Assessee trust to substantiate its claim. We clarify that in case of default, the Assessee trust shall not be entitled for any leniency.

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

Order pronounced in the open court on 23.10.2024.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Poonam Mirashi,
Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.