

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2447/MUM/2024
(Assessment Year: 2018-19)**

Sangati The Fellowship, Vasai-Virar

B-5, Shaw Blosson, Opp. S.T.Stand,
Near Tate Hospital,
Vasai Taluka,
Nallasopara West - 401203
Maharashtra
[PAN:AAKTS0727L]

..... **Appellant**

Vs

**Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre
Delhi.**

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Darpan Jawale
For the Respondent/Department : Shri Rajendra Chandekar

Date

Conclusion of hearing : 20.08.2024
Pronouncement of order : 24.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 24/03/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against intimation order, dated 30/09/2019, passed under Section 143(1) of the Act for the Assessment Year 2018-19.
2. The Appellant has raised following grounds of appeal :
"On the facts and circumstances of the case and in law the Ld.

Commissioner of Income Tax-Appeals erred in.”

1. *Computing the total taxable income of the appellant without applying all the provisions of the income tax harmoniously.*
 2. *Not considering the fact that the appellant is registered u/s.12AA of Income Tax Act, 1961 with effect from 01.04.2012.*
 3. *Not computing the total income of the appellant as per the provision of section 11 of Income Tax Act, 1961 i.e. not considering the application of income of Rs.11,35,747/- done towards the objects of trust while computing the total income of the appellant.*
 4. *Disregarding the fact that the appeal in question was admitted by the CIT(A) and consequently, two hearings were also successfully conducted on 24.06.2022 and 16.03.2023, indicating the merit and significant of the issues raised therein. However, the Ld. Commissioner of Income Tax –Appeals in the order u/s.250 later erred by mentioning that the request for condonation of delay is rejected and the appeal is treated as not admitted.*
 5. *Not appreciating the fact that the appellant has made a detailed submission in support of the grounds of appeal raised before the Ld. Commissioner of Income Tax – Appeals vide submission dated 24.06.2022 and 16.03.2023.”*
3. The relevant facts in brief are that the Appellant, a trust registered under Bombay Public Trust Act, 1850, filed return of income for Assessment Year 2018-19 on 28/10/2018 wherein the Appellant had reported receipt of voluntary contributions and other income aggregating to INR.11,27,464/-; and against the same had claimed expense of INR.11,35,747/- on account of application of income towards its objects. Since, the Appellant was registered under Section 12AA of the Act with effect from 01/04/2012, the Appellant had claimed exemption under Section 11 of the Act in respect of the aforesaid application of income. However, while processing the return of income under Section 143(1) of the Act, the application of income by the Appellant was not considered and income of the

Appellant was computed at INR.11,27,464/-.

4. Being aggrieved the Appellant preferred appeal before the CIT(A) against the Intimation Order, dated 30/09/2019. Since the appeal was filed belatedly, the Appellant had also sought condonation of delay in filing the appeal. Vide order, dated 24/03/2023, the CIT(A) dismissed the appeal holding as under:

"I have gone through the reason assigned in Form 35 for filing the appeal belatedly. The same is found not acceptable. It is noticed that the intimation order under Section 143(1) of the Act was dated 30/09/2019 and the Appellant has admitted the date of receipt of said intimation/order on 30/09/2019 in Form No.35 itself. In that case, the Appellant should have filed the appeal on or before 30/10/2019 i.e. prior to Corona outbreak in all over the World. The corona Pandemic started in India in the month of March 2020. The Appellant had sufficient time to challenge its appeal against the intimation order under Section 143(1) of the Act, if there is any genuine dispute. Hence, the Appellant's plea that due to corona pandemic, the appeal could not file is not acceptable. The Appellant has not explained valid reason for not filing appeal within the time limit allowed with documentary evidence. Therefore, the request for condonation of delay is rejected and the appeal is treated as not admitted. In view of this, there is no need to go into the merits of the case of the Appellant further. Without prejudice to the same, the Appellant has also failed to make/furnish submission in support of its grounds of appeal. This itself imply that the Appellant is not interested in pursuing the appeal."

5. Being aggrieved by the above order passed by the CIT(A) dismissing the appeal as being barred by limitation, the Appellant has preferred the present appeal.
6. The grievance of the Appellant is that the appeal was taken up for hearing on 24/06/2022 and 16/03/2023. The Appellant filed details and documents dealing with the issue raised in appeal on merits. Though, in the memorandum of appeal in Form No. 35 filed before the CIT(A), the Appellant had clearly stated the reason for delay and sought condonation for the same, the Appellant was not confronted with the issue. Therefore, the Appellant was of the bonafide belief

that the appeal was admitted by the CIT(A) for examining the issues raised on merits. It was submitted on behalf of the Appellant that the appeal was dismissed without granting the Appellant to explain the reasons for delay in filing the Appeal. It was submitted that the most of the period of delay fell within the Covid Period. This has also not been disputed by the CIT(A). Therefore, it cannot be said that there was inordinate delay in filing the appeal before the CIT(A). The CIT(A) had failed to consider that the Appellant came to know about the passing of the assessment order in mid of April 2020 only and by then the lockdown was imposed on account be outbreak of covid 19 pandemic. It was also stated that the CIT(A) had incorrectly stated that the Appellant had not filed any submission on merits. On the other hand, the Learned Departmental Representative, relying upon the order passed by the CIT(A), submitted that the Appellant had failed to provide any explanation for not filing the appeal within prescribed time when the order was passed much prior to the outbreak of covid 19 pandemic. The Intimation Order was passed on 30/09/2019 while the covid 19 pandemic started in March 2019. Thus, the time to file appeal had expired before the spread of pandemic.

7. We have given thoughtful consideration to the rival submissions and perused the material on record. We note that the Appellant had clearly stated in the memorandum of appeal in Form No. 35 filed before the CIT(A) that there was delay in filing the appeal. It was also stated therein that the Appellant got knowledge of the Intimation Order, dated 30/09/2019 in Mid-April, 2020. This aspect was not taken into consideration by the CIT(A) who went by the fact that the Appellant had stated date of order and the date of receipt of order as 30/09/2017 in the memorandum of appeal in Form No. 35 filed before the CIT(A). The appeal was filed before the CIT(A) on 10/03/2022. Admittedly lockdown was imposed on account of the spread of Covid-19 Pandemic in March 2020. Vide order, dated

10/01/2022, passed in Suo Moto Writ Petition (C) No. 3 of 2022, the Hon'ble Supreme Court had, inter alia, provided additional time in cases where the period of limitation expired during the specified period starting from 15/03/2020 and ending on 28/02/2022. In case the aforesaid period starting from 15/03/2020 to 28/02/2022 is excluded, the effective delay in filing the appeal gets reduced substantially. In our view, no benefit would have accrued to the Appellant by delaying filing of appeal before the CIT(A) against the Intimation Order, dated 31/10/2019. In the present case the bonafides of the Appellant are not under challenge.

8. In the case of **Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC)** the Hon'ble Supreme Court has, while dealing with the issue of condonation of delay, emphasized that substantial justice should prevail over technical considerations. Every day's delay must be explained does not mean that a pedantic approach should be taken and that the aforesaid doctrine must be applied in a rational common sense and pragmatic manner, more so in circumstances where a litigant does not stand to benefit by lodging the appeal late (as is the case in appeal before us). Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
9. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. Considering overall facts and circumstance of the case, we are of the view that the delay in filing the appeal before the CIT(A) should have been condoned. Accordingly, the order, dated 21/02/2024, passed by the CIT(A) is set aside. Delay in filing appeal before the CIT(A) is condoned and the issue raised in appeal before CIT(A) is restored back to the file of CIT(A) for adjudication on

merits. Thus Grounds No. 4 raised by the Appellant are allowed while all the other Grounds raised by the Appellant are dismissed as infructuous.

10. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 24.10.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.10.2024
Milan,LDC

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