

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
एवं

श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष

Before

**PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1133/KOL/2024  
Assessment Year: 2018-19**

***Baidyanath Dham Enterprise.....Appellant  
[PAN: AANFB 3088 N]***

***Vs.***

***ADIT, CPC, Bengaluru/ITO, Ward-42(1), Murshidabad.....Respondent***

**Appearances:**

***Assessee represented by: None.***

***Department represented by: Kallol Mistry, JCIT.***

Date of concluding the hearing : September 10<sup>th</sup>, 2024

Date of pronouncing the order : November 7<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-10, Mumbai [in short Id. 'CIT(A)'] dated 26.03.2024 arising out of the assessment order framed u/s 143(1) of the Act dated 31.05.2019.

1.1. None appeared on behalf of the assessee, the Id. D/R is present.

2. After hearing the Id. D/R, we have decided to dispose off this appeal on the material available on the record. On perusal of the Id. CIT(A)'s order, it

appears to us that appeal of the appellant has not been admitted on the ground that appellant has made incorrect submission in column no. 14 of Form No. 35 that there is no delay in filing the present appeal. We have perused the record and find that an order u/s 143(1) of the Act has been passed for the AY 2018-19 dated 31.05.2019. The ld. CIT(A) by not admitting the appeal has assigned the reason that on perusal of Form No. 35 appellant in column no. 2 has stated that he filed present appeal against the order dated 31.05.2019 passed u/s 143(3) of the Act though the order was passed u/s 143(1) of the Act. Further, the ld. CIT(A) did not admit the appeal on the ground that there was delay of 5 days in filing the appeal but in Form No. 35 the appellant has mentioned that there was no delay. On perusal of the ld. CIT(A)'s order it appears to us that appellant on receiving intimation with regard to the deficiency in Form No. 35 has submitted that due to the clerical mistake Section under which the assessment has been made has wrongly been written as Section 143(3) of the Act in place of Section 143(1) of the Act. We further find that he has also filed condonation of delay in filing of the memo of appeal and his condonation petition is as follows:

**Before**  
**The Hon'ble Addl/Joint Commissioner of Income Tax (Appeal)-10**  
**Income Tax Department,**  
**Mumbai**

**Re: Baidyanath Dham Enterprise**  
**Ratanpur, Dhullyan, Murshidabad, W.B 742202**  
**PAN-AAANPB3088N**

**Sub: Prayer for condonation of delay in filing the appeal memo**  
**For the asstt. year 2018-19**

**Sir,**

**Most respectfully we beg to submit that the assessee received the order of assessment and demand notice for the asstt. year 2018-19 by registered post on 14.04.2020 and the appeal memo was submitted on 19.05.2020. So, there is delay in filing the appeal. Due to illness of the partner who looks after the taxation affairs and due to the onset of COVID'19 Pandemic appeal memo could not be submitted in time. The delay in filing the appeal memo is not willful and beyond the control of the assessee.**

**So, it is prayed before honour that the delay in filing the appeal memo may please be condoned.**

**Yours faithfully,**  
**for Baidyanath Dham Enterprise**

**A. R.**

2.1. On perusal of the factual aspect of the case, we find that appellant has explained regarding this deficiency in Form No. 35 that it was a clerical mistake and further he has also submitted the condonation petition, which according to us satisfactory explanation to condone the delay. Accordingly, the delay in filing of the appeal is hereby condoned. Regarding the deficiency in inserting the Section is also hereby corrected. The case should be decided on merit and as such the order passed by the Id. CIT(A) is hereby set aside, case is restored to the file of Id. CIT(A) to hear the matter by giving an opportunity to the assessee and pass a fresh order.

3. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 7<sup>th</sup> November, 2024.**

Sd/-

**[Sanjay Awasthi]**

Accountant Member

Sd/-

**[Pradip Kumar Choubey]**

Judicial Member

Dated: 07.11.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Baidyanath Dham Enterprise, Ratanpur, Dhuliyana, Murshidabad, West Bengal, 742202.**
2. **ADIT, CPC, Bengaluru/ITO, Ward-42(1), Murshidabad.**
3. CIT(A)-10, Mumbai.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata