

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI. BR BASKARAN, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3624/MUM/2024 (A.Y: 2021-22)**

Yojana Suresh Bhoir

Dev Niwas, 2nd Floor, Balkum No. 3,
Balkum, Thane (West)

PAN: AJUPB0901E

(Appellant)

Vs. CPC Bangalore, Income

**Tax Officer, Ward 3(4),
Thane**

Ashar IT Park, 6th Floor, Wagle
Industrial Estate, Thane
(West) – 400604.

(Respondent)

Assessee Represented by

: Shri. Rajesh Athavale

Department Represented by

**: Ms. Smitha V. Nair (Addl.
CIT)**

Date of conclusion of Hearing

: 05.11.2024

Date of Pronouncement

: 08.11.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 22.05.2024 of Learned Commissioner of Income Tax (Appeals), ADDL/JCIT (A)-2, Ahmedabad [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter



referred to as “*the Act*”] for the A.Y. 2021-22, wherein the delay in filing the appeal was not condoned and appeal was dismissed as not maintainable.

2. The brief facts as culled out from the proceedings before the lower authorities are that the appellant is engaged into business of Small Transport business having Two Trucks only under the name and style of M/s Ketan Transport. The Appellant has filed Income Tax return in ITR-3 under section 139(1) on 6th December 2021 along with Income & Expenditure A/c and Balance Sheet and computation of Income. The said return was processed u/s. 143(1) on 22.03.2022 raising demand of Rs. 53,320/- by addition of Rs.2,16,810/- to the total income by disallowing the depreciation.
3. The intimation u/s. 143(1) of the Act dated 22.03.2022 by the designated authority of CPC Bangalore was sent to the assessee/appellant who has challenged the same before the Ld. CIT(A) alleging that the Ld. AO should not have disallowed the depreciation because of proper claim of depreciation made in the income tax return filed alongwith computation of income. It was stated that the appeal was filed on 21.10.2023, despite the appellant has received the intimation on 22.03.2022 and there was



delay in filing the appeal. The Ld. CIT(A) declined the request for condonation of delay of about 17 months on the ground that no sufficient grounds for condonation of delay has been made out. It was concluded that since the appeal has been found not maintainable as per discussion made in the proceedings, therefore, no decision on merit on the grounds of appeal is given and the appeal is dismissed.

4. Aggrieved by the impugned order, the assessee is in appeal before us and has raised following grounds of appeal:

1. *“The learned CIT(A) erred in not condoning a delay in filing of the appeal by the appellant. The learned CIT(A) erred in observing that the inordinate delay is not condonable in absence of justifiable reasons.*
2. *The learned CIT(A) erred in not directing the learned CPC/AO to delete the additional tax demand as the same is not permissible under Section 143(1) of the Income tax Act and such adjustment cannot be made without issuing intimation to the assessee.*
3. *The learned CIT(A) erred in not directing the CPC/AO to allow depreciation of INR 2,16,810 claimed under Section 32 of the Income tax Act while computing the business income.*
4. *The learned CIT(A) erred in directing the CPC/AO to delete the interest charged under Sections 234B and 234C of the Income tax Act.*
5. *Each one of the above grounds of appeal is without prejudice to the above.”*

5. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. AR submitted that the appellant has shown sufficient grounds for condonation of delay before the Ld. CIT(A) who did



not consider the same and dismissed the appeal in limine without deciding on merit.

6. It is further argued that the appellant/assessee has filed an affidavit giving detailed reasons as to why there was delay of 547 days in filing the appeal before the Ld. CIT(A). It is therefore submitted that the case may be referred back to the Ld. CIT(A) and the delay in filing the appeal before the Ld. CIT(A) may be condoned in the interest of justice. The Ld. DR on the other hand supported the judgment of the Ld. CIT(A) stating that the assessee has failed to show sufficient grounds for condonation of delay and the appeal has been rightly dismissed. The contents of the affidavit are reproduced as under:

1. *"I am an Individual assessed to income tax under PAN AJUPB0901E with Income tax Officer, Ward 3(4), Thane.*
2. *I had filed my income tax return for the Assessment Year 2021-22 on 6 December 2021 disclosing income of INR 3,56,150.*
3. *The Centralised Processing Unit (CPC) of the Income tax department processed the intimation for the Assessment Year 2021-22 under Section 143(1) on 22 March 2022 by disallowing deduction of INR 2,16,810 in respect of depreciation under the head "Income from Business".*
4. *As required under Section 143(1) of the Income tax Act, the CPC did not give any opportunity to me before making the above adjustment. Therefore, the CPC had made unilateral adjustment while processing intimation under Section 143(1) for the Assessment Year 2021-22.*



5. *I am not much familiar with the faceless, e- assessment/e-appeal proceedings as well as the mode of communication received from income tax department in the form of email and mobile message. When I got the demand recovery notice from the tax department in the first week of October 2023, I came to know that CPC has already passed the intimation raising the demand under Section 143(1) on 22 March 2022. When I tried to apply for the rectification against the adjustment made under Section 143(1), the Income tax portal was not allowing me to make such rectification application.*
 6. *In view of the above reasons, there was a delay of 547. days (17 months approx.) occurred while filing the appeal before the CIT(A) and this delay was unintentional.*
 7. *I request your honour to kindly condone the delay occurred while filing the appeal before the CIT(A) against the intimation passed under Section 143(1) for the Assessment Year 2021-22 and decide the matter on merits.”*
7. Nothing contrary has been brought on record by the respondents which may contradict and falsify affidavit filed by the appellant in support of seeking condonation of delay. The Hon'ble Supreme Court in the case of *Collector, Land Acquisition Vs. MST. Katiji & Ors., [1987] 167 ITR 471 (SC), dated 19.02.1987*, was pleased to hold regarding the condonation of delay as under:

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits”. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making of justifiably liberal approach in matters instituted



in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that:

1. *Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. 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.”*

8. In the facts and circumstances as discussed above and because of the law laid down by the Hon’ble Supreme Court in *Sesh Nath Singh & Anr. and Sheo Raj Singh (Deceased) Through LRS. & Ors.* referred (supra), we are of the considered opinion that there was sufficient cause for condoning the delay for filing this appeal before the Ld. CIT(A) by the assessee.
9. For the above reasons, the impugned order of the Ld. CIT(A) is not sustainable in the eyes of law and accordingly set aside with the directions to restore the case of the appellant on the file of Ld. CIT(A) who shall dispose the same on merit after duly considering the material brought on record by the appellant before the Ld. CIT(A). The appellant/assessee shall present its case before the Ld. CIT(A) within 90 days of this order.



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

Order pronounced on 08.11.2024

**Sd/-
(BR BASKARAN)
(ACCOUNTANT MEMBER)**

**Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**

Mumbai / Dated 08.11.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai