

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” BENCH, MUMBAI

BEFORE SMT. BEENA PILLAI, JM &

SMT RENU JAUHRI, AM

I.T.A. No.4734/Mum/2024

(Assessment Year: 2006-07)

Raakesh Agarwaal 139-G, S. V. Road, Jogeshwari West, Mumbai- 400102. PAN: AAAPA6074C	Vs.	Manoj Kumar Tripathi Assistant Commissioner of Income Tax 31(3) Kautilya Bhavan, BKC, Mumbai.
Appellant)	:	Respondent)

Appellant / Assessee by : Ms. Champal Purohit

Revenue / Respondent by : Shri R. R. Makwana, Sr. D.R.

Date of Hearing : 06.11.2024

Date of Pronouncement : 12.11.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated for 04.04.2024 passed by the Ld.CIT(A)/NFAC Delhi for assessment year 2006-07.

2. At the outset, we note that, the notices issued by the Ld.CIT(A)/NFAC were during the Covid 2019 pandemic. It is noted that, all limitations expiring during these times were *suo moto*



suspended by the orders passed by *Hon'ble Supreme Court*. The Ld.CIT(A)/NFAC however during the year 2024, issued one more notice, in response to which the assessee filed a letter seeking some time to furnish necessary details. However, the Ld.CIT(A)/NFAC was of the opinion that, the assessee was not interested in pursuing the appeal effectively, and thus based on the details available on record, the Ld.CIT(A)/NFAC dismissed the appeal file by the assessee.

2.1. Ld.AR submitted that notices and the orders were sent to the email ID that assessee was not provided in form 35 but on email ID as per ROI. It was submitted that therefore the assessee got to know the passing of the impugned order with a delay and the present appeal was filed belatedly by 14 days before this *Tribunal*. The affidavit stating these facts filed by the assessee is scanned and reproduced as under:-

- “1. The Deponent Mr. Raakesh Agarwaal is Senior Citizen and is fully conversant of the facts deposed below:*
- 2. That the CIT (A) order in the case of the Deponent for AY 2006-07 was uploaded on IT portal on 04.7.2024.*
- 3. That appeal against the said order was to be filed by 03.09.2024. 4. That the Deponent was unaware of the Order passed by CIT Appeal on 04.07.2024 on the portal as he did not receive any communication thereof on his email.*
- 5. That the Deponent came to know of the order passed only when his Chartered Accountant logged in on the portal to upload the submissions on 24/08/2024 and communicated the same to him on the said date.*



6. Under the above circumstances there has been a delay of only few days.

7. That delay in filing the appeal is because the Order passed by the CIT Appeals did not come to the knowledge of the Deponent. The Deponent however did all the good once he was aware of the same.”

The Ld.AR submitted that the assessee could not substantiate its claim before the first appellate authority and one more opportunity may be given to the assessee to file necessary evidence.

2.2. The Ld.DR though supported the orders passed by the Ld.CIT(A), could not controvert the finding that the issues raised by the assessee were not decided on merits.

We have perused the submissions advanced by both sides in the light of the records placed before us.

3. In our view, the assessee has made out a reasonable cause for the delay in filing the present appeal before this *Tribunal*. Nothing contrary to the submissions of the assessee has been brought to our notice by the revenue. In our opinion, there is reasonable cause to condone the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition vs. MST. Katiji & Ors. reported in [1987] 167 ITR 471*.

3.1. We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji &*



Ors., reported in (1987) 167 ITR 471 wherein, Hon'ble Court observed 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 a 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.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

3.2. Considering the submissions by both sides and respectfully following the observation by Hon'ble Supreme Court, we find it fit to condone the delay caused in filing the present appeal before this Tribunal as it cannot be attributed to the assessee. In any event,



though the procedural law pertaining to the limitation has been drafted to construe it strictly, the fact remains that, considering such technicalities will not advance the cause of justice.

3.3. In the interest of justice, we therefore remit the appeal back to the Ld.CIT(A)/NFAC to decide the issue raised by the assessee by passing a detailed order on merits. Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 12- 11-2024.

**Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER**

**Sd/-
BEENA PILLAI
JUDICIAL MEMBER**

Mumbai, Dated: 12.11.2024

Snehal C. Ayare, Stenographer/ Dragon

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

//True Copy//



ITA No.4734/MUM/2024
Rakesh Agarwal.; A. Y.2006-07

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai