

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.4604/M/2024  
Assessment Year: 2017-18**

<b>Shri Vijaykumar Nandalal Sharma,</b> Flat No.603, Innovative Residency CHL Ltd., Plot No.48B, Sector-19B, Ulwe, Opp. Croma, Navi Mumbai Maharashtra – 410 206 <b>PAN: BBXPS3334N</b>	Vs.	<b>Income Tax Officer,</b> Ward 28(1)(1), Vashi Railway Station Building, Navi Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ritesh Upadhyay, Ld. A.R. &  
Ms. Parul Pandya, Ld. A.R.

Revenue by : Shri Srinivas P., Sr. A.R

Date of Hearing : 28.11.2024

Date of Pronouncement : 28.11.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 31.07.2024, impugned herein, passed by the National Faceless Appeal Centre/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. 2017-18.

**2.** In this case, the Assessing Officer (AO) vide assessment order dated 19.05.2023 u/s 147 r.w.s. 144 & 144B of the Act has made the addition of Rs.1,15,000/-.

**3.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner by filing the first appeal, however, with a delay of 259 days in filing the appeal. The Assessee before the Ld. Commissioner with regard to the delay has submitted that the erstwhile Ld. Counsel of the Assessee failed to inform the Assessee about the non-filing of the appeal and the Assessee only came to know about the same, once the recovery notice from the Department has been received and thereafter the Assessee immediately appointed a new counsel without any further delay, somehow, the delay of 259 days in filing the appeal before the Ld. Commissioner has occurred, which was neither intentional nor malafide but because of the mis-communication/non-communication with the erstwhile Counsel.

**4.** The Assessee, being aggrieved, is in appeal before this Tribunal. This Court has observed that the cause/reason stated by the Assessee was not found as sufficient cause and therefore the Ld. Commissioner declined to condone the delay. No doubt the reason submitted by the Assessee seems to be against the Ld. Erstwhile Counsel and personal in nature, however, considering the mis-communication/non-communication as unintentional, bonafide and genuine, and therefore for the just decision of the case and substantial justice, this Court deem it appropriate to condone the delay, thus the delay occurred before the Ld. Commissioner in filling of 1<sup>st</sup> appeal, is condoned. Considering the peculiar fact that the assessment order is an ex-parte and therefore the case is remanded to the file of the Assessing Officer for decision afresh on merits, suffice to say by affording reasonable opportunity to the Assessee to substantiate his claim.

**5.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 28.11.2024.**

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

\* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.