

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4669/MUM/2024**

**(Assessment Year : 2018-19)**

**Floral Deck Plaza Premises Co-op.  
Society Ltd.,**

Central MIDC Road, Opp. to Seepz,  
MIDC Kennedy, Andheri (East),  
Mumbai - 400093  
Maharashtra  
PAN – AAAAF0155C

..... Appellant

v/s

**CPC / ITO, 24(1)(1),**

6<sup>th</sup> Floor, Piramal Chambers,  
Lalbaugh, Mumbai - 400012.  
Maharashtra

..... Respondent

Assessee by : Shri N.R. Agarwal

Revenue by : Shri Dinesh A Chourasia, Sr.DR

Date of Hearing – 03/12/2024

Date of Order – 06/12/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeal challenging the impugned order dated 08/08/2024, passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned that Additional/Joint Commissioner of Income Tax (Appeals)-1, Chandigarh ("learned Addl./Joint CIT(A)"), for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: -

*"1. The learned CIT (Appeals) erred in dismissing the appeal on account of delay in filing the first appeal Delay is off 856 days, excluding 715 days as directed by Hon. SC in Suo Moto Writ petition.*

*2. The learned CIT (Appeals) erred in not deciding the ground of addition of Rs. 1,03,48,815/- as a business income as against NIL business income filed by assessee.*

*3. The learned CIT (Appeals) erred in not allowing any expenses as per audited P & L Account as CPC had made addition of gross receipts of Rs. 1,03,48,815/- as a business income & not considering Mutuality Principal & SC judgement."*

3. We have considered the submissions of both sides and perused the material available on record. In the present case, at the outset, it is evident that the learned CIT(A) has passed the order dismissing the appeal filed by the assessee on the ground of delay without adjudicating the grounds raised by the assessee on merits against the adjustment made vide intimation issued under section 143(1) of the Act. We find that the Accountant/Consultant of the assessee made the following submission in his affidavit sworn on 17/04/2024 for seeking condonation of delay of 1571 days in filing the appeal before the learned CIT(A):-

*"1 Shabbir N Akolawala, age 70 years, residing at A 102 Badri Bulding, Mathuradas Extension Road, Kandivall (West), Mumbai - 400 067, do hereby declare that I am the Accountant of M/s Floral Deck Plaza Premises Co-operative Society Ltd., Which is situated at Floral Deck Plaza, Central MIDC Road, Opp. SEEPZ, Andheri (East), Mumbai - 400 093*

*I am handling Accounts of M/s Floral Deck Plaza Premises Co-operative Society Ltd. I have submitted my email id with Income Tax Department which is -- shabbirna786@gmail.com*

*Appeals for AY 2018-19 is filed late due to following reasons.*

*I am giving reasons for the delay of late submission of Appeal as under.*

- 1. That I have not received order from CPC for this assessee for AY. 2018-19.*
- 2. Further state that I had filed CP Gram on 15/10/2023 & order was served on 31/10/2023 by ITO 24(1)(1).*

3. However while going through portal on 05/10/2023, I came to know about outstanding demand and then download order on 05/10/2023 & filed appeal on 20/10/2023 through Mr N R Agrawal & Co. Chartered Accountants as per their advice.

4. My Wife Mrs. Munira Shabbir Akolawala is suffering from an incurable Disease called Takayasu Arthritis which is rarest of Disease in the world and out of one crore only 10 people get this disease. Her own body cells kills the blood vessels inside her body which results in severe pain, high blood pressure, hypertension, unbearable pain in head and for which she has to be operated to replace the blood vessel, and stent etc. are fixed. Since last few years she has undergone many major operations which are done at Dhirubhai Kokilaben Ambani Hospital which is at Andheri, Mumbai. There is no cure or any medicine for this disease, she has to take Steroids every day to control the bad cells of the body, yet they continue to attack only on blood vessels. Due to daily consumption of steroids her bones are weaken to such an extent that once she fell down from the chair and her leg bones broke into three pieces.

Due to my wife ill health and heavy medical expenses issues i am in severe depression, and hence I am not able to concentrate on my work. I am not able to attend the office work. Hence I missed to check the mails received.

Enclosed Dhirubhai Kokilaben Ambani Hospital Dr Vimal Someshwar certificate regarding my wife disease.

5. Initially due to Covid - 19 pandemic (Corona) entire country was lockdown and my office was also closed, staff was also not available to file the appeal.

6. I am not Techno Savvy person being 70 years old and didn't knew how to download order or file reply against any order online on income Tax Portal. I was totally depended on my staff and they didn't care about all these Income Tax matter.

7. I contacted Mr N R Agrawal of M/s N R Agrawal & Co. Chartered Accountant, at 209-B Crystal Plaza, New Link Road, Andheri (West), Mumbai - 400 053 and explained him the facts. He advised me to file the appeal & prepare an affidavit to be submitted to CIT Appeal. He also advised me file CP Gram for non-receipt of order.

I Shabbir N Akolawala Solemnly Affirm that whatever stated above is correct and true to the best of my knowledge."

4. As is evident from the impugned order, the learned CIT(A) did not agree with the submissions made on behalf of the assessee and held that there is no good and justifiable reason for the delay in filing the appeal. Accordingly, the learned CIT(A) dismissed the appeal as not maintainable. During the hearing, no material was brought on record to controvert the submissions

made on behalf of the assessee before the learned CIT(A) seeking condonation of delay.

5. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeals. In view of the facts and circumstances of the present case, as noted above, we are of the considered view that the assessee has proved sufficient cause for not filing the appeal before the learned CIT(A) within the prescribed limitation period. It is further pertinent to note that the assessee does not stand to benefit by not challenging the additions made vide intimation issued under section 143(1) of the Act. Accordingly, we are of the view that the said delay should be condoned. Hence, we deem it appropriate to set aside the impugned order and restore the matter to the file of the learned CIT(A) for consideration on merits, as per law, after condoning the delay in filing the appeal by the assessee. We order accordingly. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. The assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other

grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 06/12/2024

**Sd/-**  
**AMAJIT SINGH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 06/12/2024**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai