

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)
&
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 1944/KOL/2024
Assessment Year: 2017-2018**

***Sharma Real Estate Private Limited,.....Appellant
43, N.S. Road, English Bazar,
Malda-732101, West Bengal
[PAN:AAKCS8979F]***

-Vs.-

***Assistant Commissioner of Income Tax,...Respondent
Circle-3(1), Malda,
Income Tax Office,
Netaji Market Complex, 1st Floor,
Rathbari, Malda-732101, West Bengal***

Appearances by:

*Shri Ashim Prakash, C.A., appeared on behalf of the
assessee*

*Shri Arun Kanti Dutta, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

**Date of concluding the hearing: November 19, 2024
Date of pronouncing the order: December 10, 2024**

O R D E R

Per Duvvuru RL Reddy, Vice-President(KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17th January, 2024 passed for Assessment Year 2017-18.

2. This appeal is timed barred by more than 177 days. The main contention of the assessee is that the assessee appointed a Lawyer in Kolkata to file the appeal but the documents were misplaced by the assistant of the lawyer and did not come on the table of the lawyer. The assessee was not aware of the order passed by the Id. CIT(Appeals) and the assessee came to know about the order only after receipt of the show-cause notice after 177 days and appointed a Chartered Accountant to file the appeal. Therefore, there is no negligence or laches on the part of the assessee. Considering the facts and circumstances of the case, we are of the view that since the assessee is unaware of the order passed by the Id. CIT(Appeals) -NFAC, we find that there is a reasonable cause to condone the delay of more than 177 days. Therefore, the delay in filing the appeal belatedly for more than 177 days is hereby condoned.

3. Brief facts of the case are that the appellant is a Private Limited Company, which is engaged in the construction of a building and is yet to commence its sale/business operations. The assessee has filed its return of income for the assessment year 2017-18 declaring a loss of Rs.13,683/-. A notice was issued under section 143(2) to the assessee. After considering the submissions made by the assessee, assessment was concluded at an assessed income of Rs.22,00,000/-.

4. On being aggrieved, the assessee preferred an appeal before the Id. CIT(Appeals). After considering the submissions made by the assessee, the Id. CIT(Appeals) has given sufficient

opportunities but the assessee did not prosecute its case before the ld. CIT(Appeals). However, the ld. CIT(Appeals) passed an *ex-parte* order basing on the material available on record.

5. On being aggrieved, the assessee preferred an appeal before the Tribunal.

6. At the outset, it was brought to our notice that the appeal was filed belatedly and the ld. Counsel for the assessee submitted that the delay is due to change of the ld. Counsel and the ld. Counsel has not handed over the file to the new Counsel, therefore, the delay had occurred. It was the submission of the ld. A.R. that the ld. CIT(Appeals) has not given sufficient opportunity to substantiate its case and passed an *ex-parte* order. Therefore, he prayed to remit the matter back to the file of ld. CIT(Appeals) for one more opportunity of being heard to substantiate its claim.

7. We have perused the material available on record. Considering the facts and circumstances of the case, we are inclined to condone the delay since the assessee has explained sufficient reason to file its appeal belatedly.

8. On the other hand, ld. D.R. submitted that the ld. CIT(Appeals) has given sufficient opportunities to the assessee but the assessee did not appear before the ld. CIT(Appeals) to substantiate its claim. He pleaded to uphold the order of ld. CIT(Appeals).

9. We have heard both the sides and carefully perused the materials available on record. On examining the facts of the case, we find that the ld. CIT(Appeals) had posted the case on several occasions, but there was no response on behalf of the assessee before the ld. CIT(Appeals). Therefore, the ld. CIT(Appeals) was left with no other option except adjudicate the appeal *ex-parte* and dismissed the appeal by confirming the addition made by the ld. Assessing Officer. Therefore, considering the facts and circumstances of the case and considering the issues involved in the appeal as well as considering the plea of the ld. A.R., by following the principles of natural justice, we hereby remit the matter back to the file of Ld. CIT (Appeals)-NFAC in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (Appeals)-NFAC in the proceedings failing which the Ld. CIT (Appeals)-NFAC shall be at liberty to pass appropriate order in accordance with law on merits based on the materials available on the record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 10/12/2024.

Sd/-

Sd/-

(Sanjay Awasthi)
Accountant Member

(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 10th day of December, 2024

*Copies to :(1) Sharma Real Estate Private Limited,
43, N.S. Road, English Bazar,
Malda-732101, West Bengal*

*(2) Assistant Commissioner of Income Tax,
Circle-3(1), Malda,
Income Tax Office,
Netaji Market Complex, 1st Floor,
Rathbari, Malda-732101, West Bengal*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.