

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4237/Mum/2024  
Assessment Year: 2015-16**

M/s. Sarah Enterprises 101, Aruna Niwas Pali Naka, Bandra (W), Mumbai – 400050. <b>PAN: AAMFS 9132 K</b> (Appellant)	Vs.	ITO-23(3)(2), Mumbai (Respondent)
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**Present for:**

Assessee by : None  
Revenue by : Shri Bhangapatil Pushkaraj Ramesh, Sr. DR

Date of Hearing : 07.10.2024  
Date of Pronouncement : 12.12.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 03.05.2023 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

*“1. In the facts and in the circumstances of the case the Learned A.O. erred in making addition of Rs. 89,73,000/- being provision for rent payable to the tenant of Qureshi Manzil, Bombay Central for shifting to other premises till the completion of re-development project without grasping the facts of the case properly and CIT(A) erred in confirming the same.*

*2. In the facts and in the circumstances of the case the Learned AO erred in making addition of Rs. 37,66,867/- being provision for rent payable to the tenant of Raj Vaibhav Building, Borivali for shifting to other premises*

*till the completion of re-development project without grasping the facts of the case properly and CIT(A) erred in confirming the same.*

*3. In the facts and in the circumstances of the case the Learned AO erred in making addition without appreciating the fact that the appellant has not claimed the said amount of Rs. 3766867/- and 8973000/- as a expense in any of the year and hence, question of disallowance of expense or addition on that count does not arise and CIT(A) erred in confirming the same.*

*4. The appellant craves leave to add amend alter or delete any or all grounds of appeal.*

*5. The appellant prays that the addition made be deleted and / or appropriate relief.”*

2. There was delay in filing the appeal by 417 days. The assessee has filed application for condonation of delay along with the appeal paper. The assessee being a partner of the firm submitted that as under:

*“Your appellant could not file the appeal against the order of CIT(A) dated 03/05/2023 since your appellant was behind the bar in custody of central jail, thane for about 6 years from 25/09/2018 to 03/01/2024 and the entire work got paralysed. The appellant left with no record during the punishment period and when appellant came out, he was not in proper state of mind to complete the necessary legal formalities, and hence, the present appeal is delayed the appellant paid appeal fees of ITAT on 08/08/2024 for filing appeal before your honour for appropriate relief.*

In support of his submission that he was behind the Bar in custody of Central Jail, the assessee filed a copy of the custody certificate dated 15.02.2024 from Superintendent, Thane Central Prison, Thane stating that assessee was in judicial custody at Thane Central Prison, Thane from 25.09.2018 to 03.01.2024. Looking to the above facts and circumstances it appear there is reasonable cause for delay in filing the appeal as discussed. The

Hon'ble Supreme Court in the case of Collector Land Acquisition vs Mst, Katiji & Ors. Civil Appeal No. 460 of 1987 dated 19.12.1987 held that sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to the approach which scuttles a decision on merit. In the light of the above facts and findings, we condone the delay of 304 days in filing this appeal in order to decide the appeal on merit.

3. Fact in brief is that return of income declaring total income of Rs. Nil was filed on 30.12.2015. The case was subject to scrutiny assessment and assessment u/s 143(3) of the Act was finalized on 28.12.2017 and total income was assessed at Rs. 1,27,39,870/-. The assessee is a partnership firm engaged in the business of builder and developer. During the year under consideration, the assessee has undertaken redevelopment of tenant occupied building known as Qureshi Manzil at Bombay Central and Raj Vaibhav Building at Borivali. The assessee has made provision for rent payable to the tenant of Qureshi Building of Rs. 89,73,000/- and also made provision for rent payable to tenant of Raj Vaibhav Building, Borivali i.e. Rs. 37,66,867/-. The assessee had made provision for rent payable to the tenants of the aforesaid building without debiting the aforesaid total amount of Rs. 12,73,987/- to the P&L A/c. However, the assessing officer has added the same to the total income of the assessee on the ground that assessee has not explained the amount of such rent payable shown as sundry creditors.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee for not making any compliance during the course of appellate proceedings.

5. Heard the ld. DR and perused the material on record. Without reiterating the fact as discussed above neither the assessee has made any compliance before the ld. CIT(A) nor the ld. CIT(A) has adjudicated the appeal filed by the assessee on merit as contemplate u/s 250(6) of the Act. We consider that section 250(6) of the Act contemplate that First Appellate Authority would determine point in dispute and therefore record reasons on such point in support of his conclusion after referring material in the assessment record and filed by the assessee during the course of assessment proceedings. We consider it appropriate to restore the case to the file of the ld. CIT(A) for adjudicating on merit as prescribed u/s 250(6) of the Act after providing three more opportunities of hearing to the assessee. The assessee is also directed to make due compliance before the ld. CIT without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 12.12.2024.

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

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 12.12.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai