

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.4598/M/2024
Assessment Year: 2011-12**

Mr. Suresh Laxman Padhye, 202, Murlidhar Mandir, Murlidhar Mandir Trust, Near Union Bank, Sion (East), Mumbai Maharashtra – 400 022 PAN: AFVPP3299Q	Vs.	Income Tax Officer, Ward 26(3)(3), Kautilya Bhavan, Bandra Kurla Complex Road, Bandra Kurla Complex, Bandra (East), Mumbai Maharashtra - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Kalplesh Tularkar, Ld. A.R.
Revenue by : Shri V.K. Chaturvedi, Sr. D.R

Date of Hearing : 12 .12.2024
Date of Pronouncement : 12.12.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 17.07.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/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. 2011-12.

2. At the outset, it is observed as stated by the parties that there was a delay of 107 days in filing the appeal before the Ld. Commissioner, who vide impugned order not only dismissed the appeal of the Assessee on the point of limitation but also dismissed the same on merits as well. From the impugned order it nowhere appears "as to whether any notice to the Assessee has ever been served or not".

3. Considering the peculiar facts and circumstances of the case, specifically to the effect that the Assessee in Form No.35 in column No.14 to the specific question "whether there is delay in filing the appeal" answered "yes" and in subsequent column No.15 the Assessee has replied grounds for condonation of delay as "as per sheet attached". The Assessee further drew attention of this Court to the duly sworn affidavit dated 17.05.2019 filed before the Ld. Commisionwer, demonstrating the delay and substantiating the reason for delay, which remained to be considered by the Ld. Commissioner. Hence, considering the peculiar facts and circumstances the impugned order is set aside and case is remanded to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee.

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

Order pronounced in the open court on 12.12.2024.

**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.