

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

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

**ITA No.5265/M/2024  
Assessment Year: 2012-13**

<b>Hansa Mehesh Mehta</b> 1B/901 Kalpavruksha Garden, New Link Road, Kandivali West Mumbai 400067 <b>PAN: AJXPM8454C</b> (Appellant)	Vs.	<b>ITO 22(1)(4)</b> Room No.308, Piramal Chamber, Lal Baug, Parel Mumbai - 400012 (Respondent)
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**Present for:**

Assessee by : Ms. Kinjal Bhuta, Ld. A.R.  
Revenue by : Shri Srinivas P., Sr. DR

Date of Hearing : 28.11.2024  
Date of Pronouncement : 11.12.2024

**O R D E R**

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

This appeal has been preferred by the Assessee against the order dated 09.08.2024, 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. 2012-13.

**2.** In the instant case, the AO vide assessment order dated 13.12.2019 u/s 144 r.w.s. 147 of the Act, has made the additions of Rs.6,71,784/- as unexplained cash credit u/s 68 of the Act and Rs.20,154/- as unexplained expenditure u/s 69C of the Act.

**3.** The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner by filing first appeal. The appeal filed by the assessee has been dismissed by the Ld. Commissioner on the ground of delay but without mentioning the duration of delay. It appears from the form no.35 that the assessee in response to clause/column no.2(b & c) has answered as under:

<i>2(b)</i>	<i>date of order</i>	<i>13.12.2019</i>
<i>2(c)</i>	<i>date of service of order/ notice of demand/date of payment of tax in case of appeal u/s 248</i>	<i>22.01.2020</i>

**3.1** The assessee admittedly has filed its appeal on 18.02.2020 and in column no.14 has specifically answered "No" to the question in form No.35 i.e. "whether delay in filing the appeal. If the date of service as mentioned by the assessee in column no.1(3) of form no.35 is construed as 22.01.2020 then the appeal filed on 18.02.2020 cannot be considered

as delayed appeal. Reason best known to the Ld. Commissioner considered appeal filed by the assessee as delayed appeal, just simply on the ground that the assessee has not explained as to why an order dated 13.12.2019 has been received by her on 22.01.2020.

**3.2** Admittedly, there is no document on record to establish that the assessment order was served on the assessee prior to 22.01.2020. Considering the aforesaid peculiar facts and circumstances, as there was no delay in filing first appeal before Ld. Commissioner and even otherwise if there was delay if any construing that the assessment order has been received by the assessee on 13.12.2019 itself, even then the delay would be of 39 days which is minuscule. Hence, on the aforesaid analyzation, the determination qua delay in filing the appeal before the Ld. Commissioner, is un-sustainable. Hence the same is set aside.

**4.** Coming to the merits of the case, this Court observe that Ld. Commissioner without going into merits of the case, has decided the appeal of the assessee in limine and therefore, for the just decision of the case and substantial justice, it would be appropriate to remand the instant case to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity of being heard to the assessee. Thus, the case is remanded accordingly.

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

**Order pronounced in the open court on 18 .12.2024.**

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

\* Patel, 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.