

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “A”, MUMBAI
BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 4405/MUM/2024 (A.Y: 2016-17)**

Anil Kursija,

5th floor, Sugar Jpise. 93/94 Kazi
Sayyad Street, Vadgadi, Masjid,
Mumbai-400 003

PAN: ABCPK9183B

Vs. ITO Ward 17(1),

Aayakar Bhavan, Maharshi
Karve Road, Mumbai
– 400 020

(Appellant)

(Respondent)

Assessee Represented by

**: Shri Tanmay Phadke, Ld.
AR**

Department Represented by

**: Shri Lieder Panicker, Sr.
DR**

Date of conclusion of Hearing

: 08.10.2024

Date of Pronouncement

: 25.11.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the orders of Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”], passed



under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 15.04.2024 for the A.Y. 2016-17, wherein the Ld. CIT(A) has dismissed the appeal ex parte as despite services of notice, the assessee failed to present its case before the Ld. CIT(A).

2. Assessee has filed an application for condonation of delay alongwith affidavit and the same are as under:-

1. That the assessment order for the assessment year 2016-17 was passed under section 143(3) of the Income Tax Act, 1961 (Act) on 28.12.2018. Being aggrieved, I filed an appeal before the learned Commissioner (Appeals) on 22.01.2019.

2. That, during the pendency of the appeal, I was convicted by the Hon'ble Chief judicial magistrate, 06th court, District Thane in SCC No. 776 of 2017 for the offence under section 138 of the negotiable instruments Act, 1881. I was arrested on 10.11.2022 and has subsequently been released on 20.04.2024. I was imprisoned for more than 17 months.

3. That, since I was imprisoned, I could not give attention to the said appeal and instructions due to which the notices remained to be attended and the learned Commissioner (Appeals) passed the ex-parte order under section 250 of the Act on 15.04.2024 confirming the assessment order.

4. That, I was completely clueless about the said order. On 26.06.2024, the penalty orders were uploaded on the income tax portal for the assessment year 2022-23 and I received a message regarding the same. I thereafter visited the income tax portal and got



to know about the order dated 15.04.2024 passed by the learned Commissioner (Appeals).

5. That, since I was in a jail for the substantial period and recently came out, I was shattered and not in a proper mental framework to attend the said order immediately. Further, I had personal issues to look after and thus, the appeal against the said order could not be filed immediately.

6. That, around the second week of August, 2024, I instructed a consultant to file an appeal against the order of the learned Commissioner (Appeals) dated 15.04.2024. I was told that I had to pay Rs. 10,000/- as appeal filing fees which I did not have and a period of 8-10 days went in making the arrangement of Rs. 10,000/-. On 28.08.2024, required challan was paid and the appeal was filed.

3. The application is supported by affidavit of the assessee. The assessee put reliance upon the judgment of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition Vs. MST. Katiji & Ors.*, [1987] 167 ITR 471 (SC), dated 19.02.1987, was pleased to hold regarding the condonation of delay as under:

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits”. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making of justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.



And such a liberal approach is adopted on principle as it is realized that:

1. *Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
 2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.”*
4. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. DR supported the judgment of the Ld. CIT(A). We have considered the arguments and examined the record. Since the assessee has filed affidavit in support of condonation of delay and no contradictory facts has been brought on record by the revenue to the effect that contents of the affidavit are false, we find it expedient in the interest of justice that the assessee has shown sufficient cause for condonation of delay in filing the appeal before us. The delay in filing the appeal of 75 days is accordingly condoned.
5. It was argued on behalf of the appellant/assessee that the notice issued by the Ld. CIT(A) were never received or served upon the assessee and as such they could not present its case before the Ld. CIT(A) who proceeded ex parte and decided the appeal on merit without giving effective opportunity of hearing to the assessee and as such the assessee



was prevented from present its case before the Ld. CIT(A). Therefore, the impugned order suffers from illegality and liable to be set aside. The Ld. DR on the other hand supporting the judgment of the Ld. CIT(A) stating that there is no merit in the appeal and same is liable to be dismissed.

6. We have considered the rival submissions. Section 250 sub section 2(a) of "the Act" provides as under:

“Section 250 (2) The following shall have the right to be heard at the hearing of the appeal: -

a. The appellant, either in person or by an authorised representative;”

7. It is evident from the provision that the hearing to be given is not a formality but an effective hearing is sine qua non for the purpose of upholding the principal of natural justice. We have examined the impugned order of the Ld. CIT(A) observed as under: -

“The details of opportunities of being heard provided to the assessee are tabulated below for ready reference:

<i>Date of issue of notice of hearing</i>	<i>Requisite date of compliance (on or before)</i>	<i>Date of compliance</i>	<i>Remarks, if any</i>
<i>29.12.2020</i>	<i>13.01.2021</i>	<i>No compliance</i>	<i>--</i>



03.11.2022	Enablement of communication window	-	--
27.04.2023	04.05.2023	No compliance	--
22.05.2023	30.05.2023	No compliance	--
05.07.2023	11.07.2023	No compliance	--
14.07.2023	21.07.2023	No compliance	--
21.11.2023	01.12.2023	No compliance	--
13.03.2024	18.03.2024	No compliance	--

8. It is thus evident from the contents of the impugned order extracted above that no effective opportunity of hearing has been given and there is no proof that the notice sent on various dates were duly served or brought to the notice of the appellant/assessee.
9. For these reasons, we are of the considered opinion that matter needs to be restored to the file of the Ld. CIT (A) for giving effective hearing to the assessee who shall present its case before the Ld. CIT(A) within 60 days. The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.



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

Order pronounced in the open court on 25.11.2024

Sd/-
(NARENDRA KUMAR BILLAIYA)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 25.11.2024
Dhananjay, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai