

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

BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA No. 5324/Mum/2024
(Assessment Year: 2019-20)**

Ganesh Gangaram Mestry 39, Jan Seva Chawl, Aliyavar jung Marg, Santacruz (E) – 400055.	Vs.	NFAC, Delhi
PAN/GIR No. AQAPM0170H		
(Applicant)		(Respondent)

Assessee by	Shri Sanket tupe a/w Shri. Ganesh Bhogale
Revenue by	Shri Virabhadra Mahajan, Sr.DR

Date of Hearing	24.12.2024
Date of Pronouncement	06.01.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 13.08.2024, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment year 2019-20.

2. At the very outset, I noticed that the appeal of the assessee was dismissed by the Ld. CIT(A) in *limine* by not

condoning the delay of 148 days in filing the appeal and thus held that the appeal filed by the assessee is inadmissible.

3. Against this order the assessee has filed the present appeal before me and reiterated the same arguments as were raised by him before the revenue authorities.

4. After having heard the counsels for both the parties and after going through the records, I noticed that the appeal of the assessee before the Ld. CIT(A) was delayed by 148 days and in this regard the only contention raised by the assessee was that *“Sincerely apologize for the delay in filing an appeal. Because of frequent technical glitches at the Income Tax Portal, Assessment Order is late displayed at the portal. Only SMS is received about intimation, but email not received earlier. Therefore, humble request you to condone the delay of filing an appeal”*

5. Ld. CIT(A) after going through the reasons put forth by the assessee, was of the view that the reasons so furnished by the assessee are general in nature and not accompanied by any documentary proof or affidavit, therefore the same cannot be treated as a ‘reasonable cause’ for condoning the delay. Therefore, the appeal of the assessee was dismissed

after relying upon some decision by the Coordinate Benches of ITAT and also that of Higher Authorities.

6. I am of the view that for condoning the delay, the length of delay cannot be the sole criteria, whereas the acceptability of the reasons mentioned for seeking condonation of delay is the criteria for condoning the delay. In the present case the assessee has categorically mentioned that he has not received any email because of frequent technical glitches at the Income-tax portal, the assessment order was displayed very late.

7. At this stage, I am conscious of the principles laid down by Hon'ble Supreme Court while condoning the delay and it has been categorically held by the Higher Authorities that the words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant." (Emphasis supplied)".

8. In the present case nothing has been brought on record by the revenue to demonstrate that the delay in filing the appeal before the CIT(A) by the assessee was on account of any dilatory tactics, want of bonafides, deliberate in action or negligence on the part of assessee. Once all the above facts are not been established on record, therefore in my view the term “sufficient cause” has to receive liberal construction so as to advance the substantial justice, when no negligence or inaction or want of bonafide is imputable to the party. I am also conscious of the fact that in every case of delay, there can be some laps of the litigant concern, but that alone is not enough to turn down the plea and to shut down the doors against him. I am further of the view that if explanation put forth by the litigant does not smack of malafide or does not put forth in dilatory strategy, then in that eventuality the court must show utmost consideration to such litigant . Further I also reiterated that the length of delay is immaterial and it is the acceptability of the explanation and that is the only criteria for condoning the delay.

9. In my view, since as per the facts of the present case the assessee has categorically mentioned that he has not received orders passed by the AO in time, therefore in my view the assessee had “sufficient cause” for not filing the appeal within time. Even otherwise, in case the delay in

filing the appeal is condoned then in that eventuality no prejudice shall be caused to the rights of the revenue. Whereas on the contrary in case the delay is not condoned then in that eventuality the rights of the assessee shall be prejudiced.

10. Therefore, considering the overall facts and circumstances and also keeping in view the legal propositions, as laid down by Hon'ble Supreme Court in the case of ***Land Acquisition Collector Vs. Mst. Katiji & Ors., [1987] AIR 1353 (SC)*** I am of the view that the delay in filing the appeal before Ld. CIT(A) ought to have been condoned and thus I condoned the same.

11. Since the delay in filing the appeal before the CIT(A) has been condoned, therefore in these circumstances I restore the matter back to the file of the CIT(A), therefore, considering the above factual and legal position the Bench feels that the ends of justice would be met only if the matter is restored back to the file of the CIT(A) to decide the same afresh by providing one more opportunity of hearing to both the parties. However, the assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings and the appeal of the assessee is thus allowed for statistical purposes.

12. Before parting, I make it clear that my decision to restore the matter back to the file of the CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 06.01.2025.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated /01/2025

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai