

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON’BLE SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No. 5655/Mum/2024
(Assessment Year: 2020-21)**

Konark Residency (I) Pvt Ltd 36-38, New Satara Samuha, Dnyaneshwari Bldg, Plot No. B/2B, Sector 12, Kharghar, Navi Mumbai – 410210.	Vs.	ITO, Ward – 1(1) Thane
PAN/GIR No. AADCK6503C		
(Applicant)		(Respondent)

Assessee by	Shri Tanmay M. Phadke, Adv.
Revenue by	Shri Hemanshu Joshi, Sr. DR

Date of Hearing	11.02.2025
Date of Pronouncement	18.02.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 23.08.2024, passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC), Delhi, / (‘Ld. CIT(A)’) for the assessment year 2020-21.

2. An application for seeking adjournment has been filed. However, after going through the contents of the said application, we find no reasons for adjourning the present case. As on going through the case file, we noticed that assessee is seeking restoration of the case to the file of Ld. CIT(A) for granting proper opportunity of being heard. Therefore, considering these circumstances, we dismiss the application for seeking adjournment and taken up the file to be heard on merits.

2. At the outset, we noticed that there is a delay of 4 days in filing the present appeal and on this aspect Ld. AR requested for condonation of the said delay, as because of unforeseen circumstances the appeal could not be filed within time. Therefore, considering the request of Ld AR and hearing the representatives of the respective parties and also keeping in view the principles laid down by Hon'ble Supreme Court in the case of ***Land Acquisition Collector Vs. Mst. Katiji & Ors., [1987] AIR 1353 (SC)***, wherein it has been held that where substantial justice is pitted against technicalities of non deliberate delay, then in that eventuality the cause of substantial justice is to be preferred. Therefore, keeping in view, these principles, we condone the delay in filing the present appeal and admit the same to be heard on merits.

3. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in dismissing the appeal of the assessee on the ground of limitation. Therefore we have decided to take up all the grounds together and adjudicate the same through the present consolidated order.

4. We have heard the counsels for both the parties and perused the material placed on record, judgements cited before us and the orders passed by the revenue authorities.

5. From the records, we noticed that while filing the appeal before Ld.CIT(A) as per form No. 35, the date of service of orders has been mentioned as 07.02.2024 and the assessee has mentioned in the column No. 14 of form No. 35 that there is no delay in filing the appeal. However, Ld.CIT(A) noticed that there was inordinate delay of 16 months in filing the appeal as the order of assessment was passed by the assessing officer on 29.09.2022, whereas the appeal was instituted before Ld. CIT(A) on 07.02.2024, without filing separate application for seeking condonation of delay or without any affidavit.

6. In this regard, Ld. AR has drawn our attention to the statement of facts filed before Ld. CIT(A) and submitted that in the said statement of facts, it was specifically mention

that the assessment order was not physically served upon the assessee and even assessee did not get copy of the same on its mail ID. Therefore, being unaware of passing of assessment order, the limitation has not begun in the absence of service of the impugned order. It was further submitted that assessee has also specifically requested to provide opportunity to file application for condonation of delay along with supporting documents.

7. On the contrary, Ld. DR drawn our attention to the order of Ld. CIT(A), wherein several opportunities were granted to the assessee, but the assessee has failed to avail the same and remained negligent and acted in a very irresponsible manner.

8. Be that, as it may, without going into the merits of allegations and counter allegations, in our view, the interest of justice would be met in case the issues / lis between the parties are decided on merits, after providing fair opportunity of hearing to both the parties. Therefore, considering the above factual position, the bench feels that the ends of justice would be met, only, if the matter is restored back to the file of Ld. CIT(A), with a direction to provide fair opportunity to the assessee for moving appropriate application for seeking condonation of delay along with required documents/affidavit and thereafter to decide it

afresh after providing opportunity of hearing to the assessee. however, for the lethargic and negligent conduct, a cost of Rs. 2000 is imposed upon the assessee to be deposited with Income Tax Department and receipt of the same be placed on record before Ld. CIT(A) within 30 days from the date of the receipt of the present orders. The assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings.

9. Before parting, we make it clear that our decision to restore the matter back to the file of the Ld. 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 Ld. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 18.02.2025.

Sd/-

(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 18/02/2025

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