

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

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI GIRISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No. 6569/MUM/2024
(Assessment Year: 2014-15)**

DKT Trading Private Limited

Mars B, Vasant Galaxy, Bangur Nagar,
Motilal Nagar, Mumbai – 400104.

[PAN: AACCD9719L]

..... **Appellant**

Income Tax Officer Ward 12(2)(1)

Aayakar Bhavan, Maharshi Karve Road,
New Marine Lines, Churchgate - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Himanshu Gandhi

For the Respondent/Department : Shri Rajesh Meshram

Date

Conclusion of hearing : 04.02.2025

Pronouncement of order : 28.02.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal has been preferred by the Assessee against the order, dated 06/08/2024, passed by the Commissioner of Income Tax, Appeal, Delhi, National Faceless Appeal Centre (NFAC) [hereinafter referred to as the '**CIT(A)**'], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'], whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order, dated 25/03/2019, passed under Section 271(1)(c) of the Act, for the Assessment Year 2014-15.
2. We have heard both the sides and have perused the material on record. There is a delay of 72 days in filing the present appeal. The Assessee has filed affidavit giving explaining the reasons for the aforesaid delay and the facts and circumstances leading to the filing

of the present appeal. The relevant extract of the aforesaid affidavit reads as under:

2. *The National Faceless Appeal Centre, had passed an appeal order on 06.08.2024 in appeal filed by DKT for AY 2014-15 against the penalty u/s 271(1)(c) of Income Tax Act, 1961.*
3. *The due date for filling the appeal before the Hon'ble Income Tax Appellate Tribunal was 05.10.2024.*
4. *DKT's Quantum appeal ITA No. 1920/Mum/2018 was handled by the CAwherein. The Hon'ble Income Tax Appellant Tribunal vide order dated 30.04.2019 set aside the order of CIT(A) dated 16.11.2017 and restore the matter to CIT(A) for adjudication of appeal on merit.*
5. *The Quantum appeal is still pending before CIT(A) under National Faceless Appeal Scheme.*
6. *I was under impression that CA is handling our matter appeal matter before CIT(A) also. However, due to his old age he has stopped his appeal handling practice.*
7. *When in the month of December our Statutory Auditor CA Mahendra Mehta carried out limited review of our financials. He checked the status of appeal and we come to know that CIT(A) already passed and confirmed the penalty on assumption that CIT(A) dismissed the quantum appeal vide order dated 16.11.2017 and we have not filed a submission before him.*
8. *So, immediately we initiated the process of filling appeal before the Tribunal and on 14.12.2024 we had paid the appeal filling challan and on 16.12.2024 appeal was filed before the Hon'ble Income Tax Appellate Tribunal. This resulted into delay of 72 days.*
9. *I tender my sincere apology to Hon'ble Members and promise to be more vigilant in future and to ensure timely compliance. I was under bonafide believe that our authorized representative CA who has handled matter before the Income Tax Appellate Tribunal in Quantum Proceeding will handle before CIT(A).*
10. *Due to such unfortunate events, there has been a delay of 72 days in filing Appeal. Under the aforesaid circumstances, the I submit that the delay in filling appeal was neither intentional nor warranted and if the delay is not condoned then DKT will suffer irreparable loss and injury as the quantum appeal is still pending before CIT(A), but the penalty appeal is dismissed by CIT(A) on basis of earlier order dated 16.11.2017 which is*

already set-aside by the Hon'ble Tribunal. Therefore, the delay caused due to genuine and bona fide reasons, So I request your honour to kindly condone the delay in the interest of justice and equity.

11. In view of above and in the interest of justice, we request your honour to kindly condone the delay in filling appeal and decide the matter on merit. I shall remain grateful for this act of kindness."

3. We have no reason to doubt the above explanation offered by the Assessee for the delay of 72 days in filing the present appeal. For the reason stated in the above affidavit, we are of the view that the Assessee was prevented by reasonable cause from filing the present appeal within the prescribed time. Accordingly keeping in view, the judgment of the Hon'ble Supreme Court in the case of Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC), we condone the delay of 72 days in filing the present appeal.
4. On perusal of the impugned order passed by the CIT(A), we find that the appeal preferred by the Assessee against the penalty order levying penalty under Section 271(1)(c) of the Act, was dismissed observing that the Assessee was not interested in pursuing the appeal without dealing with the specific grounds raised by the Assessee for the reason that there was no representation before the CIT(A) on behalf of the Assessee. Whereas, irrespective of the non-appearance of an assessee before the CIT(A), the CIT(A) was required to deal with the issue raised by the Assessee on merits in view of the provisions contained in Section 250(6) of the Act. [*CIT (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bombay) 25/04/2016*]. Further, during the course of hearing the Learned Authorised Representative for the Assessee had placed on record copy of the order dated, 30/04/2019, passed by the Tribunal in the quantum appeal [ITA No. 1920/MUM/2018] preferred by the Assessee, the order, dated 16/11/2017, passed by the

Commissioner of Income Tax (Appeals) – 20, Mumbai for the Assessment Year 2014-2015 was set-aside and the appeal was restored back to the file of the CIT(A) for decision on merits. It was submitted that the aforesaid appeal was still pending adjudication and the result of the aforesaid appeal will also have bearing on levy/determination of penalty as the addition/disallowances forming the basis of levy of penalty have been challenged before the CIT(A) in the quantum appeal.

5. Given the facts and circumstances of the present case as narrated hereinabove, we set-aside the impugned order, dated 06/08/2024, passed the CIT(A) dismissing the penalty appeal and restore the grounds raised in appeal before the CIT(A) for denovo adjudication before CIT(A) as per law. The CIT(A) is directed to grant reasonable opportunity of being heard to the Assessee and adjudicate the appeal after taking into consideration the result of the quantum appeal filed by the Assessee before the CIT(A). The Assessee is directed to take necessary steps for early disposal of the aforesaid quantum appeal pending before the first appellate authority.
6. In terms of the aforesaid, the present appeal preferred by the Assessee is treated as allowed for statistical purpose.

Order pronounced on 28.02.2025.

Sd/-
(Girish Agarwal)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.02.2025
Karishma J. Pawar, Stenographer

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai