

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

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 6264/MUM/2024**  
**Assessment Year : 2009-10**

**Ameesh Chandrakant Shah,**

C-213 Sameer Apartments S. V. Road  
Andheri West,  
Mumbai - 400058  
PAN No. AENPA3898K

..... Appellant

Versus

**ITO, Ward – 24(1)(1),**

Piramal Chambers, Lalbaug, Parel,  
Mumbai-400012.

..... Respondent

Assessee by : Shri Pritesh Mehta

Revenue by : Shri Kiran Unavekar, Sr. DR

Date of Hearing – 25/03/2025

Date of Order – 25/03/2025

**Order Under Section 254(1) of Income Tax Act.**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Addl. / Joint Commissioner of Income Tax (Appeals), Bhubaneswar/ National faceless Appeal Centre [for short to as "Ld. CIT(A)"] dated 17.10.2024 for assessment year (AY) 2009-10. The assessee has raised the following grounds of appeal:

*"1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in dismissing the appeal, without granting sufficient opportunity of being heard to the appellant.*

*2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in dismissing the appeal on the ground of non-filing application for condonation of delay of 38 days in filing appeal.*

*3. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in dismissing the appeal without giving notice to the appellant regarding the dismissal of appeal on the ground of non-filing application for condonation of delay in filing appeal.*

*4. On the facts and circumstances of the case as well as in law, the Learned CIT(A) failed to appreciate that the appellant was under the impression that the appeal has been admitted since remand reports for determination of facts on merits were sent by the CIT(A) to the jurisdictional assessing officer 2 times.*

*5. The Learned CIT(A) failed to appreciate that the appellant has made the purchases in the normal course of business. All details, copies of purchase invoices, all sales invoices, relevant bank statements, ledgers of the relevant parties, their addresses, annual accounts, income tax returns and PAN, copies of VAT returns, etc, were submitted in the course of assessment as well as Appeal proceedings.*

*6. The Learned CIT(A) failed to appreciate that payments made by the appellant in respect of the said purchases were paid by account payee cheques through banks.*

*7. The Learned CIT(A) failed to appreciate that no discrepancies were noticed in the confirmation of accounts filed by the relevant suppliers in response to notice u/s 133(6).*

*8. The Learned CIT(A) failed to appreciate that the appellant has sold the purchased goods to third parties.*

*9. The Learned CIT(A) failed to appreciate that the assessing additions were made on the basis of presumptions and inferences and without any concrete evidence.*

*10. The appellant was not given an opportunity to cross examine the suppliers before making the aforesaid additions."*

2. The rival submission of both the parties have been heard and record perused. The learned authorised representative (Id AR) of the assessee submits that the Ld. CIT(A) dismissed the appeal of the assessee *in limine* without discussing on merit of the case. The Ld. AR of the assessee submits that appeal before Ld. CIT(A) was filed on 07.06.2016. The assessment order was passed on 22.03.2016 was received by the assessee on 31.03.2016. The assessee filed necessary appeal fees, for filing appeal before the Ld. CIT(A) on 04.04.2016. However, appeal was filed on 07.06.2016. The system of filing e-appeal before Ld. CIT(A) was introduced for the first time in 2016, however, the appeals were heard physically. Thus, due to certain technical glitches, and all the individual were facing difficulties in filing appeal and it could be filed only on 07.06.2016. The assessee also filed certain written submissions before the Ld. CIT(A) in physical hearings. However, later on, the faceless appeal system was introduced and appeal was migrated to National Faceless Appeal Centre (NFAC). On the written submissions of assessee, the Ld. CIT(A) called report from assessing officer (AO). Such remand report was furnished by the AO. The copy of remand report furnished by the AO, copy of which was supplied to the assessee, is already placed on record. The Ld. CIT(A) instead of considering the appeal on merit dismissing the appeal for the want of delay without issuing any show cause notice on the issue of delay. The learned AR of the assessee submits that since appeal has not been adjudicated on merit, therefore, matter may be restored back to the file of the Ld. CIT(A) with a direction to adjudicate

all the grounds of appeal on merit. On the issue of delay in filing appeal before Ld. CIT(A), the Ld. AR of the assessee submits that delay was neither intentional nor deliberate particularly due to the fact that necessary appeal fees was paid on 04.04.2016. Moreover, there was no inordinate delay in filing the appeal. The assessee is not going to be benefitted by filing appeal belatedly. The Ld. AR reiterated that present appeal may be restored back to the file of the CIT(A) with a specific direction to adjudicate the grounds of appeal on merit.

3. On the other hand, the learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue submits that there was delay in filing appeal before Ld. CIT(A), which was not explained by assessee. Thus, he supported the order of the CIT(A).
4. We have considered the rival submissions of both the parties and perused the orders of lower authorities carefully. We have also perused the remand report called by the Ld. CIT(A) and submissions filed before him. On considering the submissions and the order of CIT(A), we find that before dismissing the appeal on the issue of limitation, no specific show cause notice was issued rather the remand report was called on merit of the grounds of appeal. Despite the fact that assessee has filed written submission and the relevant evidence to substantiate the grounds of appeal raised in first appeal, the Ld CIT(A) took shortcut route to dismiss the appeal in limine. So far as delay in filing the appeal before CIT(A), we find that assessee has paid necessary fees on 04.04.2016, i.e., within four days of receipt of impugned assessment order,

therefore, facts suggests that the delay in filing appeal before Ld. CIT(A) was neither intentional nor deliberate. Thus, assessee has reasonably explained the circumstances leading to filing of appeal as it may be due to technical glitches on e-filing appeal introduced in 2016. We are also conscious of the fact that initial system of filing e-appeal was introduced the tax payer was facing difficulties and keeping in view such difficulties, the time period for filing the appeal was extended by Central Board of Direct Taxes (CBDT). Again, advertent to the facts and circumstances of the present case. Considering the facts directed above, in our view, the Ld. CIT(A) was not justified in dismissing the appeal without issuance of show cause notice. Considering the fact that delay in filing the appeal before Ld. CIT(A) is already done by us, therefore, the matter is restored back to the file of the Ld. CIT(A) to adjudicate on the issue of merit. Needless to direct that before passing the order afresh, the Ld. CIT(A) shall allow reasonable opportunity of hearing to the assessee. The assessee is also allowed liberty to file additional evidence in support of its claim. The assessee is also directed to provide all required details to the Ld. CIT(A). In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

Order pronounced in the open Court at the time of hearing on 25/03/2025.

Sd/-

**GIRISH AGRAWAL**  
**ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, DATED: 25/03/2025

*Prabhat*

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Mumbai; and*
- (5) Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai