

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

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4383/MUM/2024
(Assessment Year: 2013-2014)**

M/s. Saloni Jewellers Pvt. Ltd.

80/B, 2nd Floor, 29/AAA, Patwa Chawl,
Mumbai Shaikh Memon Street,
Zaveri Bazar, Mumbai-400002.
Maharashtra.
[PAN:AAGCS5432B]

..... **Appellant**

Vs

**Assistant Commissioner of Income Tax
4(3)(2), Mumbai**

Aayakar Bhavan, M.K.Road,
Mumbai-400020.

..... **Respondent**

&

**ITA No. 4384/MUM/2024
(Assessment Year: 2014-2015)**

M/s. Saloni Jewellers Pvt. Ltd.

80/B, 2nd Floor, 29/AAA, Patwa Chawl,
Mumbai Shaikh Memon Street,
Zaveri Bazar, Mumbai-400002.
Maharashtra.
[PAN:AAGCS5432B]

..... **Appellant**

**Deputy Commissioner of Income Tax
4(3)(1)**

Aayakar Bhavan, M.K.Road,
Mumbai-400020.

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Rutuja N. Pawar
Ms. Saiyami Shah

For the Respondent/Department : Shri. Bhangapatil Pushkaraj Ramesh

Date

Conclusion of hearing : 20.03.2025
Pronouncement of order : 28.03.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two appeals preferred by the Assessee pertaining to Assessment Years 2013-2014 and 2014-2015. Since identical issues were raised in the appeals, the same were heard together and are, therefore, being disposed by way of a common order.

ITA No. 4383/MUM/2024 (Assessment Year 2013-2014)

2. We would first take up appeal for the Assessment Year 2013-2014 preferred by the Assessee against the order, dated 12/02/2024, passed by the 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 against the Assessment Order, dated 30/03/2016, passed under Section 143(3) of the Act.
3. The Assessee has raised following grounds in appeal No. 4383/Mum/2024:
 - "1. *That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in upholding the disallowance u/s. 40(a)(ia) of the Act of interest quotient as on TDS was deducted on payment made to TATA Capital Ltd. amounting to Rs. 4,66,012/-.*
 2. *That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in upholding the disallowance levied by Assessing Officer of Rs. 1,20,00,000/- being salary to the Directors by applying provision of section 40A(2)(b) of the Act.*
 3. *That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in upholding the ad-hoc disallowance levied by Assessing Officer of printing and stationery expenses, exhibition expenses and Labor charges expenses amounting to Rs. 1,89,75,279/-.*

4. *That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in upholding the disallowance levied by Assessing Officer of Rs. 6,44,486/- being sales promotion expenses.*
 5. *That the impugned order being contrary to law, evidence, and facts. of the case may kindly be set aside, amended, and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.*
 6. *That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*
 7. *That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents, and papers as may be necessary."*
4. When the appeal was taken up for hearing the Ld. Departmental Representative pointed out that the appeal was barred by limitation. In response the Ld. Authorized Representative for the Assessee submitted that the Assessee-company has suffered financial losses and was no longer undertaking business. The director of the company pursuing the tax matters was not aware of the appellate procedure pertaining to online appeal/hearing before the National Faceless Appeal Centre (NFAC) and got to know about the order, dated 12/02/2024, having been passed by the CIT(A) only in the month of August. Thereafter, the director of the company took steps to file appeal before the Tribunal. It was submitted that on account of financial issues being faced by the Assessee-company there were no employee/supporting staff looking after the business and tax matters of the company. In the aforesaid facts and circumstances delay of 137 days had taken place in filing the present appeal before the Tribunal. Inviting our attention to the order passed by the CIT(A), the Ld. Authorized Representative for the Assessee further submitted that even during the appellant proceeding before the CIT(A) the Assessee could not comply with the notice of hearing

issue by the CIT(A) and therefore, the appeal were dismissed by the CIT(A) holding that the Assessee was not interested in pursuing appeal.

5. On per contra the Learned Departmental Representative pointed out that the Assessee has been non-compliant during the assessment proceedings as well as the proceedings before the first appellate authority. Having been granted sufficient opportunity, the Assessee had failed to make proper representation and therefore, the Assessee could not be permitted take advantage of its own wrong.
6. We have considered the arrival submission and have perused the material on record as regards delay of 137 days in filing the present appeal is concerned. In the case of Collector, Land Acquisition Vs. Mst. Katiji and Ors. [167 ITR 471] it has been held by the Hon'ble Supreme Court that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. Further, refusing to condone delay can result in a meritorious matter being thrown 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. In the present case there is nothing on record to disbelief the reason stated in the application seeking condonation of delay explaining the failure of the Assessee to file the present appeal within time. The application seeking condonation of delay is supported by affidavits sworn by the director of the Assessee-company. Keeping in view the above said judgment of Hon'ble Supreme Court we are inclined to condone the delay of 137 days in filing the present appeal. As regards the ground raised by the Assessee on merits are concerned, given the facts and circumstance of the present case, we

are inclined to restore the issues in the present appeal back to the file of CIT(A) since the proper representation was not made before the CIT(A) and since the CIT(A) had dismissed the appeal observing that the Assessee was not interested in prosecuting the appeal. In view of the aforesaid, we set aside the order, dated 12/02/2024, passed by the CIT(A) and restore the ground raised in the present appeal back to the file of the Learned CIT(A) with the directions to decide same afresh on merits as per law. The Assessee is directed to be vigilant and track the appellate proceedings through Income Tax Business Application Portal. The Assessee is also directed to cooperate in the appellate proceedings and forthwith file details/documents/submission in support of its claims/contentions before the Learned CIT(A). It is clarified that the Learned CIT(A) shall grant reasonable opportunity of being heard to the Assessee. However, in case the Assessee fails to enter appearance and/or fails to file details/documents/submission in response to notice of hearing, the Learned CIT(A) shall be at liberty to decide the issues on merits on the basis of material on record. In terms of the aforesaid, Ground No. 5 raised by the Assessee is treated as allowed for statistical purposes while all the other grounds are dismissed as having been rendered infructuous.

7. In terms of paragraph 6 above, the present appeal preferred by the Assessee is treated as allowed for statistical purposes.

ITA No. 4384/MUM/2024 (Assessment Year 2014-2015)

8. Next, we would take up appeal for the Assessment Year 2014-2015 preferred by the Assessee against the order, dated 12/02/2024, passed by the CIT(A) under Section 250 of the Act whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 29/12/2018, passed under Section 144 of the Act.

9. The Assessee has raised following grounds in appeal No. 4384/Mum/2024:

- "1. That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in upholding the addition levied by Assessing Officer of Rs. 14,82,27,000/-u/s. 68 of the Act.*
- 2. That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in holding Profit before Tax amounting to Rs. 10,75,38,482/- as Business Income.*
- 3. That the impugned order being contrary to law, evidence, and facts of the case may kindly be set aside, amended, and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.*
- 4. That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*
- 5. That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents, and papers as may be necessary."*

10. Both the sides agree that in identical facts and circumstances, the appeal preferred by the Assessee against the Assessment Order dated 29/12/2018 for the Assessment Year 2014-2015 was dismissed by the CIT(A) leading to filing of the present appeal before this Tribunal. Our finding/adjudication in relation to the appeal for Assessment Year 2013-2014 shall apply mutatis mutandis to the appeal preferred by Assessee for the Assessment Year 2014-2015. Accordingly, the delay of 137 days in filing the appeal for Assessment Year 2014-15 is also condoned and the issues raised in the appeal are restored back to the file of the CIT(A) with the identical directions as contained in paragraph 6 above. Ground No. 3 raised by the Assessee is treated as allowed for statistical purposes while all the other grounds are dismissed as having been rendered infructuous. Thus, the present appeal pertaining to Assessment Year 2014-15 is also treated as allowed for statistical purposes.

11. In conclusion both the appeals preferred by Assessee are treated as allowed for statistical purposes.

Order pronounced on 28.03.2025.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.03.2025
Disha Raut ,Stenographer

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai