

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.2725/PUN/2024  
Assessment year : 2016-17**

|   |            |                       |
|---|------------|-----------------------|
| Sai Sakshi Automotive Pvt. Ltd.<br>805, The Reverie, Bhandarkar<br>Institute Road, Haveli,<br>Pune – 411004 | <b>Vs.</b> | ITO, Ward 6 (1), Pune |
| <b>PAN: AATCS7275D</b>  |            |                       |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>   |

Assessee by : Shri B.S. Rajpurohit  
Department by : Shri Mallikarjun Utture, CIT  
Date of hearing : 05-02-2025  
Date of pronouncement : 06-02-2025

**ORDER**

**PER R. K. PANDA, VP :**

This appeal filed by the assessee is directed against the order dated 21.11.2024 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2016-17.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the Ld. CIT(A) / NFAC in dismissing the appeal filed by the assessee on account of delay and thereby confirming the addition of Rs.7,55,49,806/- made by the Assessing Officer who has determined the total income of the assessee at Rs.7,34,04,170/- as against the returned loss of Rs.21,45,638/-.

3. Facts of the case, in brief, are that the assessee is a Private Limited company engaged in business of dealership of Skoda Brand cars upto 2018. It filed its return of income on 17.10.2016 declaring total loss of Rs.21,45,638/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Subsequently the case was selected for complete scrutiny under CASS to verify unsecured loans, large current liability, investments in property and sales turnover. Accordingly, notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. However, there was no compliance from the side of the assessee to the various notices issued by the Assessing Officer (in total 8 in number). The Assessing Officer therefore, proceeded to complete the assessment u/s 144 of the Act and determined the total income of the assessee at Rs.7,34,04,170/- by making the following disallowances / additions:

|      |   |                         |
|------|---|-------------------------|
| i)   | <i>Disallowance of EPF/ESIC contribution</i>    | <i>Rs.14,77,899/-</i>   |
| ii)  | <i>Disallowances in Profit and Loss Account</i> | <i>Rs.72,51,796/-</i>   |
| iii) | <i>Unexplained Cash credits u/s 68</i>          | <i>Rs.6,68,20,111/-</i> |

4. Since the assessee filed the appeal with a delay of 149 days, the Ld. CIT(A) dismissed the appeal filed by the assessee by observing as under:

*“5.1 I have gone through the Assessment Order and grounds of appeal filed by the appellant. It is observed that the date of notice of demand mentioned is dated 25th December, 2018 and the appellant has filed appeal on 24th June, 2019, which is beyond statutory permissible time limit of 30 days. Overall, there is delay of 149 days.*

*5.2 The appellant mentioned that he did not receive notice for the ongoing proceedings since closure of his business. Thus, there was delay in filing of appeal.*

*5.3 Condonation of delay being a discretionary power available to appellate authority, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable.*

*5.4 Thus, belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day.*

*5.5 The condonation of delay cannot be a routine affair. A person, who is not vigilant, is not entitled for the relief after a prolonged period.*

*5.6 In other words, for condonation of delay, the reasons adduced must be properly pleaded, convincing and acceptable and explanation should be offered for condonation of the delay Unless proper explanation is offered, the Appellate authority could not exercise its discretion in the proper perspective to advance substantial justice.*

*5.7 The appellant has mentioned that he did not receive notice due to closure of his business. It is pertinent to mention that proceedings were conducted in online environment. Non-receipt of notice due to Closure of business is not a valid reason for non compliance with statutory timelines. The reason is not found to be justified and in absence of the valid reason, the delay cannot be condoned. The appeal filed is time barred and is not maintainable ab initio.*

*5.8 Accordingly, the appeal of the appellant is dismissed.”*

5. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee at the time of hearing filed a voluminous paper book. Referring to the same, he submitted that on the basis of various submissions made by the assessee, the Ld. CIT(A) called for a remand report, copy of which is placed at pages 361 to 364 of the paper book. He submitted that the Assessing Officer in the remand report dated 14.12.2023 has given a positive

report. However, the Ld. CIT(A) without considering the remand report of the Assessing Officer and without considering the affidavit filed by the assessee explaining the reasons for delay in filing of the appeal, dismissed the appeal which is not justified. He submitted that in the interest of justice, the matter may be restored to the file of the Ld. CIT(A) with a direction to condone the delay and decide the appeal on merit. He also relied on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. reported in 167 ITR 471 (SC) and various other decisions.

7. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A).

8. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and Ld. CIT(A). It is an admitted fact that due to non-response to the statutory notices issued by the Assessing Officer, he was constrained to pass the order u/s 144 of the Act wherein he made the various additions / disallowances, the details of which are given in para 3 of this order. We find the assessee filed an appeal before the Ld. CIT(A) with a delay of 149 days and filed an affidavit explaining the reasons for such delay. Further, on the basis of various submissions filed, the Ld. CIT(A) called for a remand report from the Assessing Officer. However, not being satisfied with the reasons for delay in filing

of the appeal, the Ld. CIT(A) dismissed the appeal being barred by limitation, the reasons of which have already been reproduced in the preceding paragraphs.

9. We find in the instant case the Ld. CIT(A) has called for a remand report from the Assessing Officer and the Assessing Officer vide letter dated 14.12.2023 has submitted his remand report. We find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. (supra) has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Refusing to condone delay can result in a meritorious matter being thrown out 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.

10. Following the decision of Hon'ble Supreme Court cited above and considering the totality of the facts of the case and in the interest of justice, we are of the considered opinion that the Ld. CIT(A) should have condoned the delay and decided the issue on merit. We, therefore, set aside the order of the Ld. CIT(A) and restore the issue back to his file with a direction to condone the delay in filing of the appeal and decide the appeal on merit as per fact and law. The assessee is also hereby directed to participate in the appeal proceedings and submit the

requisite details before the Ld. CIT(A) on the appointed date without seeking any adjournment under any pretext, failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 6<sup>th</sup> February, 2025.

**Sd/-**  
(ASTHA CHANDRA)  
JUDICIAL MEMBER

**Sd/-**  
(R. K. PANDA)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 6<sup>th</sup> February, 2025

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे  
/ ITAT, Pune

| S.No. | Details  | Date       | Initials | Designation |
|-------|--|------------|----------|-------------|
| 1     | Draft dictated on                                | 05.02.2025 |          | Sr. PS/PS   |
| 2     | Draft placed before author                       | 06.02.2025 |          | Sr. PS/PS   |
| 3     | Draft proposed & placed before the Second Member |            |          | JM/AM       |
| 4     | Draft discussed/approved by Second Member        |            |          | AM/AM       |
| 5     | Approved Draft comes to the Sr. PS/PS            |            |          | Sr. PS/PS   |
| 6     | Kept for pronouncement on                        |            |          | Sr. PS/PS   |
| 7     | Date of uploading of Order                       |            |          | Sr. PS/PS   |
| 8     | File sent to Bench Clerk                         |            |          | Sr. PS/PS   |
| 9     | Date on which the file goes to the Head Clerk    |            |          |             |
| 10    | Date on which file goes to the A.R.              |            |          |             |
| 11    | Date of Dispatch of order                        |            |          |             |