

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3025/Del/2024
Assessment Year: 2018-19

M/s. Flex Foods Limited, 305, Third Floor, Bhanot Corner, Pamposh Enclave, Greater Kailash-1, New Delhi	Vs.	DCIT, Central Circle-27, New Delhi
PAN: AAACF0108K		
(Appellant)		(Respondent)

Assessee by	Sh. M.P. Rastogi, Adv. Sh. Shivam Malik, Adv.
Department by	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of hearing	17.04.2025
Date of pronouncement	17.04.2025

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2018-19, arises against the Commissioner of Income Tax (Appeals)-3 [in short, the "CIT(A)"], Noida's order dated 07.05.2024 passed in case no. CIT(A), Delhi-29/10425/2017-18, involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.
3. The assessee has raised the following substantive grounds in the instant appeal:

“1. The Ld. CIT(A) did not provide a proper opportunity of being heard to Assessee to present the condonation of delay. 2. In the interest of justice, delay of (no, of days) should be condoned to the Assessee. The Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors (1987) 2 SCC 107, has laid down that the courts should adopt a pragmatic approach in matters of condonation of delay, emphasizing that a liberal approach should be taken in the interests of justice, especially when no negligence or inaction or lack of bonafide is imputable to the appellant.

2. Assessee is a non-tech person who was unaware of the assessment proceedings as he resides in the village during COVID year FY 21-22, and assessment notices were served on the email of the previous counsel of the Assessee, who was no longer engaged with the Assessee only when son of Assessee visited him in November in hospital, he became aware of Assessee's situation and immediately filed appeal.

3. It is submitted that the delay was neither intentional nor willful but was caused due to circumstances beyond the control of the appellant. The Hon'ble Supreme Court in Postmaster General & Ors vs. Living Media India Ltd. & Anr (2012) 3 SCC 563, reiterated that if sufficient cause is demonstrated, condonation of delay is to be considered favorably.

4. The Officer has not made the appellant aware in respect of any penalty appeal, thereby failing to notify the appellant about the proceedings and the grounds for penalty.”

4. Suffice to say, both the learned representatives are ad-idem during the course of hearing that the lower authorities herein have refused to even admit the assessee's section 10(1) agricultural income exemption claim qua receipts derived from mushroom growing for want of a revised return in light of Goetze India Ltd. Vs.

CIT, (2006) 284 ITR 323 (SC). That being the clinching factual position emanating from the records, we are of the considered view that once their lordships' detailed discussion more particularly in para 4 has made it clear that jurisdiction of the appellate authority under the provisions of the Act to admit such a new claim even without a revised return, have nowhere been impinged upon, we are of the considered view that the learned lower authorities impugned action rejecting the assessee's section 10(1) exemption claim is not sustainable in law in principle. We thus accept the assessee's instant sole substantive ground for statistical purposes. At this stage, we direct the learned Assessing Officer to re-examine the issue afresh as per law subject to a rider that the appellant only shall plead and prove its case, at its own risk and responsibility, within three effective opportunities in consequential proceedings. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 17th April, 2025

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 17th April, 2025.

RK/-

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi