

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'SMC' BENCH, KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)**

**I.T.A. No. 2588/KOL/2024  
Assessment Year: 2017-2018**

***Dream Residency Twins,.....Appellant  
44/2A, Hazra Road, Kolkata-700013  
[PAN:AAGFD1014M]***

**-Vs.-**

***Deputy Commissioner of Income Tax,.....Respondent  
Circle-32, Kolkata,  
Income Tax Officer,  
10B, Sir William Jones Sarani,  
Middleton Row, Park Street Area,  
Kolkata-700071***

**Appearances by:**

*Shri Sunil Surana, A.R., appeared on behalf of the  
assessee*

*Shri S.B. Chakraborty, JCIT, Sr. D.R., appeared on  
behalf of the Revenue*

**Date of concluding the hearing: April 09, 2025**

**Date of pronouncing the order: May 30, 2025**

**O R D E R**

The present appeal is directed at the instance of assessee against the order of Id. Addl./JCIT(Appeals), Udaipur dated 3<sup>rd</sup> December, 2024 passed for Assessment Year 2017-18.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2017-18 declaring total income at

'NIL'. The Id. Assessing Officer completed the assessment determining the total income of the assessee at Rs.36,27,550/-. On being aggrieved, the assessee preferred an appeal before the Id. CIT(Appeals) with a delay of more than 22 months and filed condonation petition to justify the said delay, which reads as under:-

*"The order u/s 143(1) was received on 27.01.2020 and same was handed to our Chartered Accountant (CA) for taking necessary action. We were pursuing alternative remedy through rectification petition u/s 154 against the intimation issued under sec. 143(1) for the assessment year. The same was filed on 06.02.2020 for assessment year 2017-18 with information of the audit report in Form-10CCB filed on 29.01.2020. The request for rectification petition has been rejected on 11.02.2020 and the post of such rejection was received on 20th March, 2020. Therefore, the same was handed to a senior advocate for consultation and paper was lying with him and in between pandemic of novel coronavirus spread and following lockdown was announced by our Honourable Prime Minister Shri Narendra Modi to stop spreading of Virus. It has now been decided after consultation with Senior Advocate to file the present appeal which is the alternative course of action to address the grievance of the assessee. Therefore, there is a delay in filing appeal which may please be condoned.*

3. After considering the submissions made by the assessee, the Id. CIT(Appeals) dismissed the appeal saying that the assessee failed to establish the reasonable cause to condone the delay of more than 22 months.

4. On being aggrieved, the assessee preferred an appeal before the ITAT and raised the following issues:-

*(1) For that the Id. CIT(A) erred in dismissing the appeal as no maintainable by not condoning the delay in filing of appeal ignoring the fact that the assessee was pursuing alternate remedy through the rectification route and further delay was cause due to pandemic.*

*(2) For that the ld. CIT(A) erred in confirming the disallowance u/s 81B(10) when the return was filed within due date and the deduction was duly claimed in the return of income.*

*(3) For that the ld. CIT(A) erred in confirming the disallowance u/s 81B(10) when non-filing of Form 10CCB was only technical breach of law and therefore, not under the scope of prima facie adjustment u/s 143(1) since the return was not disturbed by way of scrutiny.*

*(4) For that the ld. CIT(A) erred in confirming the disallowance u/s 81B(10) when the deduction u/s 81B(10) was allowed in initial assessment year and there was no change of facts during the year under consideration.*

5. I have heard both the sides. It was the submission of the ld. Counsel for the assessee that the delay occurred due to spread of pandemic of novel coronavirus and following lockdown announced by our Hon'ble Prime Minister in filing of the appeal for the period falling before COVID exempt period. The ld. Counsel for the assessee further pleaded that the assessee has fair chance to win the case and pleaded to set aside the order passed by the ld. Addl./JCIT(Appeals) and remit the matter back to the file of ld. CIT(Appeals) with a direction to dispose of the appeal on merits.

6. On the other hand, ld. Departmental Representative for the Revenue submitted that the assessee has not satisfactorily explained the reasons to condone the delay of more than 22 months. Therefore, the ld. Addl./JCIT(Appeals) has rightly dismissed the appeal filed by the assessee. He pleaded to uphold the order passed by the ld. Addl./JCIT(Appeals).

7. I have perused the material available on record. Considering the reasons mentioned in the petition, I am of the view that the delay had occurred due to Covid pandemic and lockdown thereof throughout the entire country. Therefore, considering the facts and circumstances of the case, I am of the view that it is a fit case to condone the delay and accordingly, I condone the delay of more than 22 months and remit the matter back to the file of Id. CIT(Appeals) with a direction to dispose of the appeal on merits. At the same breath, I also hereby caution the assessee to promptly co-operate with the proceedings before the Ld. Addl./JCIT(Appeals) failing which the Ld. Addl./JCIT(Appeals) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on the record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

**8. In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open Court on 30/05/2025.

Sd/-  
**(Duvvuru RL Reddy)**  
**Vice-President (KZ)**

***Kolkata, the 30<sup>th</sup> day of May, 2025***

*Copies to :(1) Dream Residency Twins,  
44/2A, Hazra Road, Kolkata-700013*

*(2) Deputy Commissioner of Income Tax,  
Circle-32, Kolkata,  
Income Tax Office,  
10B, Sir William Jones Sarani,*

*Middleton Row, Park Street Area,  
Kolkata-700071*

- (3) Addl./JCIT(Appeals), Udaipur;*
- (4) CIT - , Kolkata;*
- (5) The Departmental Representative;*
- (6) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***