

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH ,ALLAHABAD**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.8/ALLD/2022  
Assessment Year: 2015-16**

Kanodia Investments Private Limited 1, Lukerganj, Allahabad, U.P.	v.	Deputy Commissioner of Income Tax Centralized Processing Centre Bengaluru
PAN: AABCK0604Q		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A.K.Singh, Sr. DR
Date of hearing:	19.07.2022
Date of pronouncement:	21.07.2022

**ORDER**

**PER SHRIRAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee has arisen from appellate order dated 20.12.2021 passed by learned Commissioner of Income-tax (Appeals) (National Faceless Appeal Centre(NFAC)) (hereinafter called “the Id. CIT(A)”) in appeal number CIT(A), Allahabad/10095/2020-21, DIN& Order No. ITBA /NFAC/S/250/2021-22/1037949719(1) for assessment year 2015-16 , which in turn has arisen from an intimation u/s 143(1) of the Income-tax Act, 1961 (hereinafter called “the Act”), vide order dated 05.08.2016.

2. On the earlier occasions , when this appeal came up for hearing before Division Bench, the assessee had sought adjournments and the Division Bench was pleased to grant the adjournment's. But, when this appeal was called for hearing before Division Bench, on 19<sup>th</sup> July, 2022, none appeared on behalf of the assessee nor any adjournment application was filed by the assessee, and the Division Bench decided to adjudicate this appeal after hearing ld. Sr. Dr.

3. The ld. Sr. DR submitted at the outset submitted that the assessee filed an appeal with ld. CIT(A) with delay of around 4 years , i.e. 1473 days, beyond the time prescribed under the provisions of Section 249(2)(b) of the 1961 Act. The ld. Sr. DR submitted that the assessee did not show sufficient cause before ld. CIT(A) for filing its appeal late beyond the time provided under the 1961 Act , and thus, the ld. CIT(A) refused to condone the delay. Thus, prayers were made by ld. Sr. DR to dismiss this appeal, as ld. CIT(A) has rightly dismissed the appeal of the assessee, because no sufficient cause was shown by assessee in filing this appeal late with ld. CIT(A). The ld. Sr. DR took us to relevant para's of the appellate order passed by ld. CIT(A).

4. We have perused the material on record and heard the contentions raised by ld. Sr. DR. None appeared on behalf of assessee before tribunal nor any adjournment application has been filed, when this appeal was called for hearing before Division Bench on 19<sup>th</sup> July, 2022. We have observed that the assessee filed its return of income on 30.09.2015, declaring income of Rs. 1,01,11,460/- . The return of income was processed by Revenue u/s 143(1) , on 05<sup>th</sup> August, 2016, computing total income of the assessee at

Rs.1,38,71,490/- . The assessee itself admitted before Id. CIT(A) (page 2 of Id. CIT(A) order-para 4 of assessee's submission before Id. CIT(A)) that said intimation u/s 143(1) dated 05.08.2016 was duly received by assessee on its e-portal. The said intimation was received by Managing Director on behalf of the assessee company , and then handed over to its regular counsel who is a qualified Chartered Accountant by Profession. Thus, intimation dated 05.08.2016 u/s 143(1) was undisputedly and admittedly received in time by assessee company, by its Managing Director on its behalf who handed over the same to its regular counsel, who is a qualified CA. The assessee being a company is a legal entity with perpetual succession duly registered under the Companies Act , and being a corporate entity has to necessarily operates through human beings. The Managing Director is one of the top most functionaries of the Company having been vested with substantial powers of management, to operate and manage the company. Similarly, regular counsel of the assessee is a qualified CA who was handed over the intimation u/s 143(1) well in time by none other than Managing Director, and then he also comes under responsibility/duty to see that the appeal is filed in time, for which he is required to follow up consistently with MD and / or with other top functionaries of the assessee company. Merely keeping an intimation u/s 143(1) for four years and not ensuring that appeal is filed in time with Id. CIT(A), will not discharge the responsibility , unless the assessee itself had refused to file appeal through the said regular counsel or brief is returned by the counsel for any reasons including non- co-operation of the assessee. Both the human agencies, namely MD and CA, failed to ensure that appeal is filed in time,

and that the appeal was ultimately filed with Id. CIT(A) with a substantial delay of almost 4 years(1473 days) , despite having coming to know of the factum of demand being raised by Revenue vide intimation dated 05.08.2016. The appeal was filed with Id. CIT(A) on 16.09.2010 , with delay of 1473 days i.e.almost more than 4 years, beyond the time stipulated u/s 249(2)(b) of the 1961 Act. The assessee pleaded illness of the MD before Id. CIT(A) , but Id. CIT(A) has observed in its appellate order that no documentary evidence to justify/substantiate such a huge delay has been filed by the assessee. Even before us, no evidence of illness of MD has been filed. The Id. CIT(A) has also observed in its order that the assessee was contesting other appeals for ay: 2005-06 and 2006-07 as well .The assessee is a corporate entity which is building houses , and is supported by a Board of Directors and qualified professional . Even if it is assumed MD was ill which incapacitated him for continuously four years , the assessee could have entrusted the task to other Directors/officers of the assessee (very heavy onus on assessee to prove with cogent evidence of MD being incapacitated for four years which assessee failed to bring on record, and then reasons for continuing with the MD if he was so incapacitated for a long period of four years) , as the issue involved on merit touching upon deduction u/s 80IB(10) was a regular issue coming from preceding year , and not much complexity was involved in filing appeal in time more-so the assessee is supported by a qualified professional who was a regular counsel handling tax matter. Under these circumstances, the onus/burden was very heavy on the assessee to explain huge delay of 4 years in filing appeal before Id. CIT(A) beyond time prescribed u/s 249(2)(b) of the

1961 Act, more so intimation u/s 143(1) dated 05.08.2016 was admittedly and undisputedly received by assessee in time. The ld. CIT(A) is vested with discretionary powers to condone delay where the assessee is able to demonstrate sufficient cause. Reference is drawn to provisions of Section 249(3) of the 1961 Act. This discretion is to be judiciously exercised by ld. CIT(A) in fair, reasonable and transparent manner. Any capricious, malicious or whimsical use of the power by ld. CIT(A) in disregard of evidence on record or without any evidence on record, will call for interference by higher judicial forums. In this case, in our considered view, the ld. CIT(A) judiciously exercised its powers in most fair, reasonable and transparent manner in not condoning the substantial delay of 1473 days in filing appeal beyond time prescribed under 1961 Act, and in such cases our scope of interference is very limited to see whether this powers were judiciously exercised in fair, reasonable and transparent manner, or not, and whether the assessee had a sufficient cause or not in not presenting the appeal in time, and despite sufficient cause shown by the assessee, the ld. CIT(A) exercised its power in capricious, malicious or whimsical manner. The appeal under the 1961 Act is a statutory right which arises from statute, and the litigant has to comply with the conditions attached by statute in filing the appeal. Thus, in this case, we are not inclined to interfere with the decision of ld. CIT(A) in not condoning delay in filing appeal before ld. CIT(A) late by 1473 beyond time prescribed u/s 249(2)(b) of the 1961 Act, as we hold that ld. CIT(A) passed a well reasoned order in not condoning delay in filing appeal late by assessee by 1473 days before ld. CIT(A), and further ld. CIT(A) exercised his

discretionary powers in not condoning delay in most fair, reasonable and transparent manner , as the assessee failed to show sufficient cause in not filing this appeal within time prescribed under statute , despite having received intimation u/s 143(1) in time. Thus, this appeal holds no merit and is dismissed. Since, we refused to interfere with decision of Id. CIT(A) in not condoning delay in filing appeal by assessee with Id. CIT(A), thus we have not discussed the issues on merits raised by assessee in its appeal w.r.t. to restricting its claim u/s 80IB(10) of the 1961 Act .We order accordingly.

5. In result, the appeal filed by assessee in ITA no. 8/Alld./2022 for ay: 2015-16 stand dismissed ,as indicated above.

Order pronounced in the open Court on 21/07/2022 at Allahabad , U.P.

*Sd/-*  
[VIJAY PAL RAO]  
JUDICIAL MEMBER

*Sd/-*  
[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

DATED: 21/07/2022

Copy forwarded to:

- 1.Appellant –Kanodia Investments Private Limited , 1, Lukerganj ,Allahabad, U.P.
2. Respondent –The Deputy Commissioner of Income Tax , Centralized Processing Centre, Bengaluru(The AO, Aayakar Bhawan, M G Marg, Allahabad, U.P.)
3. CIT(A) – National Faceless Appeal Centre(NFAC) , Delhi ( The Id. CIT(A)Aayakar Bhawan, M G Road, Allahabad, U.P.)
4. CIT- AayakarBhawan, M G Road,Allahabad, U.P.
5. Sr. DR – ITAT, AayakarBhawan, M G Road, Allahabad, U.P.

By order  
Assistant Registrar

