

THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

M.A. No. 268/Mum/2020 in
I.T.A. No. 4364/Mum/2018 (Assessment Year 2008-09)

Ramji R. Gupta 215, Shivam Chambers S.V. Road Goregaon West Mumbai-400 104. PAN : AABPG1959P (Appellant)	Vs.	CIT-31 Pratyakshkar Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri M. Subramanian
Department by	Ms. Shreekala Pardeshi
Date of Hearing	12.02.2021
Date of Pronouncement	09.03.2021

ORDER

Per Shamim Yahya (AM) :-

By way of this Miscellaneous Application assessee seeks recall of the order of this Tribunal in ITA No. 4364/Mum/2018 for A.Y. 2008-09 vide order dated 4.9.2019.

2. In the said order the ITAT has held that there was delay of 1890 days in filing the appeal and no condonation petition was on record and that nobody appeared despite notice by the Tribunal. In these circumstances the ITAT has dismissed the appeal in limine as time barred. Now the assessee submits that the assessee had duly submitted condonation petition but the same was attached in another appeal of the assessee and hence the same was not available to the ITAT when the impugned appeal was heard.

3. Upon careful consideration, we note that there was another appeal pending on behalf of the assessee in ITA No. 1633/Mum/2016 for the same assessment year against the order passed under section 143(3) read with section 263 of the I.T. Act. Both the appeals were consolidated for hearing on

19.6.2019. In these backgrounds, we find cogency in the submission of the assessee that condonation application might have been missed out by the ITAT.

4. In these circumstances, upon hearing both the parties and perusing the record, we recall the aforesaid ex-parte order of the ITAT. We make it clear that we have not considered the issue of condonation of delay. The same shall be considered upon hearing of the appeal. The Registry is directed to fix the appeal for hearing in normal course.

5. In the result, Miscellaneous Application by the assessee stands allowed.

Pronounced in the open court on 9.3.2021

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 09/03/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS