R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1712 OF 2017

Kush Properties & Developers Pvt Ltd .. Appellant

Versus

The Dy. Commissioner of Income Tax,
Central Circle 2(1), Pune .. Respondent

....

- Mr. Rohan Deshpande a/w Suyog Bhave for the Appellant
- Mr. Sham Walve a/w Mr. Pritesh Chatterjee for the Respondent

....

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 21, 2020.

P.C.:

1. Heard Mr. Deshpande, learned counsel for the appellant and Mr. Sham Walve, learned standing counsel, revenue for the respondent.

2. This appeal under Section 260A of the Income Tax Act, 1961 ("**the Act"** for short) has been preferred by the appellant - assessee assailing the legality and correctness of the order of the Income Tax Appellate Tribunal, Pune Bench "A", Pune (**"Tribunal"** for short) dated 17.3.2017 passed in Income Tax Appeal No. 2658/Pun/2016 for the block period

1997-98 to 2003-04.

3. The said appeal has been dismissed by the Tribunal on the ground of being time barred. The related condonation application filed by the appellant was dismissed by the Tribunal by taking the view that no reasons were assigned by the appellant for condoning the delay of 1305 days in preferring the appeal.

4. Learned counsel for the appellant has taken us through the appeal and submits that appellant was pursuing his remedy of rectification of the appellate order passed by the Commissioner of Income Tax (Appeals) under Section 154 of the Act and that was the reason for the delay. He further submits that against the rejection of rectification application, appellant has preferred appeal before the Tribunal which is within time but the appeal against the appellate order of the Commissioner of Income Tax (Appeals) on merit was time barred. He further submits that the matter may be remanded back to the Tribunal for a fresh decision after hearing afresh the parties.

5. However, learned standing counsel, revenue supports the order passed by the Tribunal and submits that there is no infirmity in the view taken by the Tribunal as the assessee failed to explain the delay.

6. Submissions made have been considered.

7. On due consideration and taking an overall view of the matter, we feel that it would meet the ends of justice if the matter is decided afresh by the Tribunal after giving due opportunity to the appellant to explain the delay in preferring the related appeal.

8. Ordered accordingly.

9. Needless to say, no opinion is expressed on merit and all contentions are kept open.

10. Consequently, order dated 17.3.2017 is set aside and the matter is remanded back to the Tribunal for a fresh decision in accordance with law.

11. The appeal is accordingly disposed of.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

Ravindra M. Amberkar

Digitally signed by Ravindra M. Amberkar
Date: 2020.01.24 11:01:14 +0530