

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3830/MUM/2013
Assessment Year: 2005-06**

Shri Sukhpreet Singh (HUF), A-51, Orchid Tower, Lokhandwala Complex, Andheri (West), Mumbai - 400053 PAN: AANHS9431G	Vs.	The ITO – 15(2)(1), Mumbai
(Appellant)		(Respondent)

&

**ITA No. 3831/MUM/2013
Assessment Year: 2009-10**

Shri Sukhpreet Singh (HUF), A-51, Orchid Tower, Lokhandwala, Andheri (East), Mumbai - 400053 PAN: ASFPS5767H	Vs.	The ITO – 11(3)(3), Mumbai
(Appellant)		(Respondent)

Assessee by : None

Revenue by : Shri V. Justin (DR)

Date of Hearing: 06/11/2017

Date of Pronouncement: 28/11/2017

ORDER

PER RAM LAL NEGI, JM

These appeals have been preferred by the assessee against two orders dated 01/09/2011 and 15.03.2013 passed by the Commissioner of Income Tax (Appeals)-26 & Commissioner of Income Tax (Appeals)-2 Mumbai, respectively for the assessment years 2005-2006 and 2009-2010, whereby the Ld. CIT (A)-26 and Ld. CIT(A)-2 have dismissed the appeals filed by the assessee against

assessment order passed u/s 143(3) and 144 of the Income Tax Act, 1961 (for short 'the Act'). Since both the appeals pertain to the same assessee, both the appeals were clubbed for hearing together. Hence, both the appeals are being disposed of by this common order for the sake of convenience.

ITA No. 3830/MUM/2013 (Assessment Year: 2005-2006)

This case was fixed for hearing on 06/11/2017. On the said date the case was called for hearing, however, neither the assessee nor his representative appeared nor did we receive any application for adjournment on behalf of the assessee. We noticed that the assessee has not appeared for the last four dates of hearing. From the conduct of the appellant/assessee we are satisfied that the assessee is not interested in pursuing its appeal. We, therefore, decided to dispose of the appeal on the basis of material on record. Accordingly, we asked the Ld. departmental representative to argue on behalf the revenue.

2. Brief facts, emanating from the material on record are that the assessee filed its return of income for the relevant assessment year declaring the total income as Nil. The same was processed and after making addition of Rs. 5,97,950/- out of agricultural income claimed by the assessee and Rs. 9,97,950/- out of bank receipts, assessment order was passed u/s 143(3) of the Act determining the total income of the assessee at Rs. 15,95,900/-. In the first appeal, the Ld. CIT(A) confirmed the additions made by the AO. Against the said order, the assessee is in appeal before the Tribunal.

3. The Ld. DR at the very outset submitted that the appeal of the assessee is barred by law of limitation as there is a delay of 165

days in filing the same and the reasons given by the assessee in the application for condonation of delay is not sufficient to condone the delay. On merit the Ld. DR relying on the concurrent findings of the authorities below, submitted that there is no infirmity in the order passed by the Ld. CIT(A) to interfere with the same.

4. The assessee has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A):-

1. *“The respected Assessing Officer has erred in making additions of Rs. 5,97,950/- out of Agricultural Income treating as Non Agricultural without enquiry into complete facts and circumstances of the case just on the basis of assumption, suspicion & surmise.*
2. *The respected Assessing Officer has erred in making addition of Rs. 9,97,950/- out of amounts deposited into bank accounts treating it as unexplained cash credit without enquiry into the complete facts and circumstances of the case just on the basis of assumption, suspicion & surmise.”*

5. We have carefully perused the material on record in the light of the grounds of appeal and the submissions of the Ld. DR. As pointed out by the Ld. DR there is a delay of 165 days in filing the present appeal. Sub-section 5 of section 253 of the Act provides that the Tribunal may admit appeal or permit filing of memorandum of cross-objection of respondent after expiry of relevant period of limitation referred to in sub-section 3 and 4 section 253, if it is satisfied that there was sufficient cause for not presenting it within that period. So, the sufficient cause is the condition precedent for exercising the discretion by the court for condoning the delay. Therefore, when the mandatory provision is not complied with and the delay is not properly explained, the court cannot condone the delay on sympathetic grounds alone. In the present case the assessee has prayed for condonation of

delay mainly on the ground that the he was not properly guided by his tax consultant. The assessee has not even filed an affidavit in support of his contention. Under these circumstances we are of the considered view that the reasons mentioned in the application are not sufficient to condone the delay of 165 days in filing the present appeal. Hence, the application for conation of delay is dismissed being devoid of merit.

6. Since, we have dismissed the application for condonation of delay, the present appeal is not maintainable being barred by the law of limitation. We accordingly dismiss the present appeal as not maintainable.

ITA No. 3831/MUM/2013 (Assessment Year: 2009-2010)

The present appeal pertains to the assessment year 2009-10. The assessee filed its return of income for the said assessment year declaring the total income of Rs. 4,13,850/-. During the assessment proceedings, the AO issued notice u/s 142(1) of the Act, however, the assessee neither appeared nor filed the details called for. Accordingly, AO passed assessment order u/s 144 of the Act and determined the income of the assessee at Rs.39,31,910/- after making addition of Rs. 35,17,850/-on account of unexplained cash credit and bank credit card expenses. In the first appeal the Ld. CIT(A) confirmed the action of the AO. Aggrieved by the order passed by the Ld. CIT(A), the assessee is in appeal before the Tribunal.

2. The assessee has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A) pertaining to the assessment year 2009-2010:-

1. *“The respected Assessing Officer has erred in adding Rs. 25,74,540/- out of amounts deposited into bank accounts treating it as unexplained cash credit without appreciating the facts & circumstances of the case just on the basis of assumption, suspicion & surmise.*
2. *The respected Assessing Officer has erred in adding Rs. 9,43,310/- out of amounts deposited into bank accounts treating it as unexplained cash credit without appreciating the facts & circumstances of the case just on the basis of assumption, suspicion & surmise.”*
3. Before us, the Ld. DR relying on the concurrent findings of the authorities below, submitted that since the assessee has failed to submit the details called for and explain the cash deposits and amounts paid through credit cards in question before the authorities below despite several adjournments sought for this purpose, the Ld. CIT(A) has rightly dismissed the appeal of the assessee.
4. We have perused the material on record. From the order of the Ld. CIT(A) it can be concluded that the assessee was neither serious before the AO nor before the first appellate authority in pursuing its case despite sufficient opportunity granted by the said authorities. The Ld. CIT(A) has mentioned the dates on which either the assessee did not appear or sought adjournments. As per the settled law burden of explaining the cash deposits and payments made through credit card in question is on the assessee. Since, the assessee has failed to discharge the burden aforesaid, the Ld. CIT(A) had no option but to affirm the order of the AO. Hence, we do not find any infirmity in the impugned order to interfere with the same. We, therefore, uphold the order of the Ld. CIT(A) and dismiss the appeal of the assessee.

In the result, appeals filed by the assessee for assessment years 2005-2006 and 2009-2010 are dismissed.

Order pronounced in the open court on 28th.November, 2017.

Sd/-
(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 28/11/2017

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai