

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
[Before Shri Pramod Kumar, Vice President]**

ITA No. 1078/Ahd/2017
Assessment Year : 2011-12

Mahavirkumar C. Jain
704A/7/1, Ramnivas Building,
Opp. Khara Kuva Ni Pole,
Relief Road, Ahmedabad
[PAN : ABGPJ 2096 L]

.....Appellant

Vs.

Income Tax Officer
Ward 2(2), Ahmedabad

.....Respondent

Appearances by:

Mehul Talera, for the applicant
James Kurian, for the respondent

Date of concluding the hearing : 18.02.2019

Date of pronouncing the order : 16.04.2019

O R D E R

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s order dated 13th January 2017, in the matter of assessment under section 144 of the Income-tax Act, 1961 for the assessment year 2011-12.

2. Grievances raised by the appellant are as follows:-

"1) That on facts and in law, the learned CIT(A) has grievously erred in not granting condonation of delay in filing appeal and in dismissing the appeal as time barred.

2) That on facts and in law, the learned CIT(A) ought to have condoned the delay in filing of appeal and ought to have decided it on merits, as per law."

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The appeal before the CIT(A) was belated appeal and it was time barred by over 19 months. The delay was explained by the assessee as follows. It was stated that the address on which the assessment order was served did not belong to the assessee inasmuch as the assessee had vacated the said premises much before the service of order. It was then stated that the assessee's mother has suffered a heart attack, his brother was undergoing treatment for serious heart ailment and his father had undergone an open heart surgery. The assessee also set out other medical problems that he and his family members were going through. It was then explained that the assessee discovered his bonfide mistake only when, in October 2015, his bank account was subjected to recovery proceedings by the Income Tax

Department. The assessee submitted that immediately upon so discovering the error, in the month of November 2015, the assessee filed the appeal. This explanation was, however, rejected by the CIT(A). The CIT(A) rejected the explanation and dismissed the appeal as time barred. The assessee is aggrieved and is in appeal before me.

4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. I find that the assessee apparently overlooked seriousness of the consequences of assessment framed upon him, as he was said to be undergoing a difficult time on personal front and his family members had serious health issues. It was only upon his bank account being attached that the gravity of his mistake was realized and immediately thereafter the appeal was filed. When someone is going through a difficult patch of time on health and family front, such a lapse cannot be ruled out bonafide. It was also important to notice that almost immediately upon bank account being attached, the appeal was filed. On these facts, and bearing in mind the fact that the assessee is an individual, I am of the considered view that a lenient view on the condonation of delay should have been taken. In my considered view, therefore, it was a fit case for condonation of delay in filing of appeal before the CIT(A).

6. In view of the above discussions, and bearing in mind entirety of the case, I deem it fit and proper to remit the matter to the file of the CIT(A) for condoning the delay and adjudicating the matter on merits. I further direct the assessee to approach the CIT(A) on his own within 15 days of receipt of this order, to fully cooperate on expeditious disposal of the appeal and to ensure that such information, as the CIT(A) may requisite, is furnished in time. Ordered, accordingly.

7. In the result, the appeal is allowed for statistical purpose. Pronounced in the open court today on the 16th April, 2019.

Sd/-

Pramod Kumar
(Vice President)

Ahmedabad, the 16th day of April, 2019

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad