

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

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.1331/AHD/2015
निर्धारणवर्ष/Assessment Year: 2006-07**

Anuragraji V. Goswami, C/o. Yogesh B. Shah, 5/458, Haripura, Kaljug Street, Surat-395003 [PAN: AAJPT 4629 F]	Vs.	Income Tax Officer, Ward-5(1), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Mehul Shah, CA
राजस्वकीओरसे /Revenue by	Ms. Anupama Singhla, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07-02-2020
उद्घोषणाकीतारीख/Pronouncement on:	13-02-2020

आदेश /O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee is directed against the order of Commissioner of Income-Tax (Appeals)-I, Surat [in short “the CIT(A)”] dated 03-03-2014, for the assessment year 2006-07.

Condonation of Delay:-

2. The assessee has pointed out that there is a delay 380 days in filling before the Hon’ble Tribunal. It was explained that the order of the CIT(A) dated 03-03-2014 received by the assessee on 02-04-2014. Hence, an appeal against the said appellate order was required to be filed on or before 31-05-2014. The assessee has filed an affidavit stating therein the reason and circumstances causing the delay. It was submitted that due to shifting residence from Surat to Banaras, the delay was caused. So, there was no

intention to not abide by provision of the law. Therefore, the assessee has seek to pardon for the same and the delay may kindly be condoned.

3. The ld. counsel further placing reliance on the decision of N. Balakrishanan v. M. Krishnamurthy (1998) 7 SCC 123 (SC) and Collector, Land Acquisition v. Mst. Katiji and others 167 ITR 471 (SC).

4. We have heard the rival submissions and perused the material available on record. As far as the issue of condonation of delay is concerned, it is settled law that the Court are quasi-judicial bodies are empowered to condone the delay if the litigant satisfies the court that there were sufficient reasons for the availing the remedy after the expiry of the limitation. In the case of N. Balakrishnan v. M. Krishnamurthy (supra), there was a delay of 883 days in filing of application in setting aside the *ex-parte* decree for which application for condonation of delay was filed. We find that the acceptability of the explanation is the only criteria for condoning the delay. In a given case, a delay of the shortest period may be uncondonable due to unacceptable explanation, whereas in certain other cases, delay of a long period can be condoned, if the explanation is satisfactory. However, if no mala-fide can be attributed to the delay, that delay will be condonable. We find that the assessee has shifted from Surat to Banaras, therefore, the assessee has a reasonable cause for filing appeal in delay. Hence, delay is condoned.

5. Ground no. 1,2 & 3 relates to sustaining of Rs.3,05,200/- and Rs.1,15,390 being income in the hands of the appellant. Though the gift of Rs.3,05,200/- gift worth of Rs.3,00,000/- is received through cheque from

father Vallabhraji which is also income tax assessee and Rs.1,15,390/- and Rs.5,200/- were received through small lot from public and as each lot is below Rs.25,000/-.

6. Brief facts of the case are that the AO noticed that the assessee credited a gift of Rs.3,05,200/- claimed to be received on occasions of Diwali/holi and amount of 3,05,200/- being guru daxina income on pardharani vidhi by Yajmans. The assessee explained that the gift were received from his followers which were gifted in small amount of Rs.10,1,20,151/- etc. However, the gift of Rs.3,00,000/- was received from his father. Since no confirmation was filed of gift and the AO treated the same as unexplained. Accordingly, the AO made addition of Rs.4,20,590/- on this account.

7. Being aggrieved, the assessee carried the matter before the Id. CIT(A). Wherein same submissions were repeated. Further, the CIT(A) observed that the assessee has been changing his stand on time to time. Firstly, it was explained that the whole of the amount of Rs.4,02,590/- was received on account of miscellaneous gifts of small amounts received on various occasions of Diwali, holi and guru daxina. However, the appellant has changed his version by stating that out of total amount, Rs.3,00,000/- was received as gift from his father. However, this explanation of appellant was not found acceptable for the reason that the assessee failed to furnish any gift deed or confirmation from his father during assessment proceedings as well as the appellate proceedings. In view of these facts the addition made by the AO amounted to Rs.4,20,590/- was sustained.

8. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld. counsel for the assessee submitted that the assessee is a Maharaj of Vaishnav cult and is a pujari of Mota Mandir, Surat. He is engaged in performing vaidic rituals etc., undertakes religious trips to Vrundavan, Kumbhemala etc. on no profit no loss basis. He is not a business man. He does not carry out any business activity. He may not be aware of the different obligations of the Government to be observed at the different stage in the wordly life. He has received gift of Rs.3,00,000/- through transfer from savings bank A/c. No.42012 of his father Shri Vallabhraiji Maharaj, with Bank of India, Main branch, Surat on 08-08-2005. He further received an amount of Rs.5200/- from devotees on Janmashtmi, Dipawali, Holi and Raxabandhan. The gift of assessee received from his father with love and affection and same should not be added in his return of income. Further, the gifts of Rs.1,15,390/- were the gifts outside the ambit of section 56(v) as stood before 31.03.2006 and such these gifts were not chargeable to income tax under the head income from other sources. The ld. counsel supported this arguments by placing reliance on the decision of ITAT, Mumbai Bench in the case of Nirmal P. Athvale v. ITO (2008) 22SOT 197 (Mumbai).

9. *Per contra*, the ld. sr. DR relied on the order of lower authorities.

10. We have heard the rival submission and perused the material available on record. We find that the gift of Rs.3,00,000/- were received from the father of the assessee which is duly reflected in the bank account of Bank of India dated 08.08.2005 appearing at paper book page 28 with regard to

others the same amount of Rs.5,200/- being small gifts and gifts of Rs.1,15,390/- received from the followers which also not chargeable to tax in the light of decision of ITAT (Bombay) in the case of Nirmala P. Athavale (supra) wherein it was held that whether where assessee who was a well-known social reformer and philosopher having lakhs of followers spread all over world and who used to charge no fee or remuneration from his followers or persons who attended his lectures, had received voluntary gifts of certain sum from his followers in recognition of his personal qualities and noble thoughts, gifted sum could not be termed as benefit or perquisite within meaning of section 28(iv) of the Act. Similar finding was rendered by the Hon'ble Bombay High Court in the case of Dilip Kumar Roy v. CIT (1974) 94 ITR 1 (Bombay) whenever an amount is paid as personal gift for personal qualities of assessee and as token of personal esteem and veneration, it cannot be subjected to tax as income arising out of business, profession or vocation. Since, the gift is reflected of Rs.300000/- reflected in the balance account and others were received from followers, therefore, we are of the considered opinion that the addition is not sustainable and the same is directed to be deleted.

11. Ground no. 4 & 5 are related to addition of Rs.8,64,264/- representing 1/4th of expenses of Vrajyatra.

12. Brief facts of the cases are that the AO noticed that as per the statement furnished by the assessee of Rs.33,12,700/- was collected from Vraj yatris and Rs.34,57,055/- was incurred as expenses. Therefore, the AO observed that it could not be understood that how assessee has incurred

expenses more than his receipts and also has shown honorarium of Rs.1,80,320/- as taxable receipts. The assessee was asked to furnish the documentary evidences in support of expenses. The assessee has required to explain the same, however, no explanation was furnished hence the AO was disallowed 1/4th of the expenses claimed which were worked out of Rs.8,64,264/- which is added to total income.

13. Being aggrieved, the assessee carried the matter before the Id. CIT(A). However, the addition was came to be sustained as the expenses were not found from verifiable in absence of any authenticate evidence.

14. Being aggrieved, the assessee carried the matter before this Tribunal. The Id. counsel submits that the assessee incurred the expenditure of Rs.34,57,055/- for Yatra. The entire information of various expenses incurred during the yatra was submitted before the CIT(A) which were called for remand report. The AO also noticed the details of templets of Vraj Yatra is containing the entire information of the Vraj yatra such as schedule of the different programmes, telephone Nos of the special pilgrims engaged in providing services, terms and condition during the yatra and also during baithakji was furnished submitted receipts of Vraj yatra given to entries between 04.09.2005 to 15.10.2005 were also submitted payment receipts on stamp paper, from various persons, decoraters, Shahganj Agra were also filed documents, quotation given by Uma Tent, quotation given by Shri Satishchandra Thakur of Jatipura, Mathura were filed. Since, the assessee had incurred all such expenses during the yatra but since being a pujari, he may not be aware of the different obligations of the government

to be observed at the different stage in the worldly life. He did not obtain bills, receipts, vouchers of the expenditure incurred during the Yatra from Surat to banara. At the same time, he did not maintain bank account related to yatra. However, the assessee has furnished ledger of various expenses and expenditure details in excel sheet and templets. Therefore, the AO has not justified in disallowing the 1/4th of the expenses incurred by the assessee of Vraj yatra.

15. *Per contra*, the ld. Sr. DR relied on the order of the lower authorities.

16. We have heard the rival submissions and perused the material available on record. We find that the assessee has undertaken of Vraj yatra for which he has collected receipts amounting to Rs.33,12,700/- and has incurred expenditure of Rs.34,57,055/-. The detailed of the same were furnished. Further, it was not supported by the appellants and vouchers. However, the evidence is in the form of copy of ledger account, templets and receipts of electricity expenses photocopy etc. and affidavit of Shri Satishchandra and placed at paper book 22 supported the fact that the assessee has undertaken Vraj yatra. Since, the assessee being the pujari and does not know the intricacy of law which does not make that the assessee has not incurred expenditure on the Vraj Yatra. Therefore, considering the holistic view and facts of the case that we are of the opinion that the disallowance of expenses at the rate of 1/4th is caused of Rs.486464/- is deleted. Accordingly, ground no.4 & 5 of the appeal is allowed.

17. Ground no.6 & 7 are relates to interest u/s. 234A has been wrongly charged and penalty u/s.271(1)(c) of the Act. The above facts are being consequent in nature; hence, no adjudication is required.

18. In the result, the appeal of the assessee is treated as allowed.

19. The order pronounced in the open Court on 13-02-2020

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 13th Feb, 2020/Samanta, PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/ Guard file of ITAT.

By order

// TRUE COPY //

Assistant Registrar, Surat

Standard preparation & delivery of orders in the ITAT		
1	Date of dictation	02.2020
2	Draft placed before the Author	02.2020
3	Draft proposed & placed before Second Member	02.2020
4	Draft discussed/ approved by Second Member	02.2020
5	Approved Draft comes to Sr. PS /PS	02.2020
6	Kept for pronouncement on	02.2020
7	Date of uploading order on the web site	02.2020
8	File sent to Bench Clerk	02.2020
9	Date on which file goes to the A.R. for signature	02.2020
10	Date on which file goes to Head Clerk	02.2020
11	Date of dispatch of order	02.2020