

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.1861/Mum/2019
(Assessment Year: 2010-11)**

Hiren Mohanlal Shah 371, Sukh Niwas Castle Bhandarkar Road, Matunga (C.R), Mumbai-400 019	Vs.	ITO-17(2)(2) Room No.122 Piramal Chambers Mumbai-400 012
PAN/GIR No.AAUPS0624G		
Appellant)	..	Respondent)

Assessee by	Shri Vijay Mehta & Shri Govind Javeri, AR's
Revenue by	Shri R.Bhoopati, DR
Date of Hearing	05/03/2020
Date of Pronouncement	20/05/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-32, Mumbai, dated 25/09/2018 and it pertains to Assessment Year 2010-11

2. The assessee has raised the following grounds of appeal:-

- 1. The Learned CIT(A) has erred in law and in facts in upholding the order passed by the Assessing Officer u/s 143(3) of the Income tax Act, 1961, which is illegal and bad in law.*
- 2. The learned CIT (A) has erred in law and in facts in dismissing the appeal by holding that the appeal did not deserve any merit consideration.*
- 3. The learned CIT (A) has erred in law and in facts in confirming the disallowance of Rs.2,22,628/-, being proportionate disallowance made by the Assessing Officer u/s. 36(i)(iii) of the Act.*

4. *The learned CIT (A) has erred in law and in facts in confirming the disallowance of Rs.25,146/- made by the Assessing Officer, being 20% of the following expenditure :*

- a) *Car insurance and petrol expense : Rs.41,9697-*
- b) *Depreciation on motor car : Rs. 13,7107-*
- c) *Depreciation on computer : Rs. 3,8977-*
- d) *Telephone expenses : Rs. 66,156/-*

5. *The learned CIT (A) has erred in law and in facts in upholding the following disallowances made by the Assessing Officer*

- a) *Depreciation on fixed assets: Rs. 56,709/-*
- b) *Financial expenses : Rs. 8,67,453/-*

6 *The order passed by the CIT(A) is bad in law and without jurisdiction.*

7. *The appellant craves leave to add to, alter, amend, modify and/or delete all or any of the above grounds.*

3. At the time of hearing, the Ld. AR for the assessee submitted that there is a delay of 68 days in filing appeal before the Tribunal, for which necessary application for condonation of delay along with affidavit of the appellant has been filed explaining the reasons for delay in filing appeal. The Ld. AR, further submitted that as per the affidavit of the assessee, the delay in filing appeal before the Tribunal is neither, deliberate nor with a intention to delay, the proceedings before the authorities, but solely on the reason of ill-health of the father of assessee shri Mohanlal M.Shah, who is a senior citizen looks after the entire finance, banking, accounts and tax related matters was hospitalized for certain ailments and hence, he is unable to file the appeal within the time prescribed under the Act. The Ld. AR, further submitted that thereafter, Shri Mohanlal M.Shah, took necessary steps and filed the captioned appeals, which caused delay of '68' days. He, further submitted that by admitting the captioned appeal, no prejudice will caused to the revenue, because the Ld.CIT(A) has decided the issue *ex-parte* without hearing the assessee on various additions made by the Ld.

AO. Therefore, the delay in filing appeal may be condoned and the appeal by the assessee may be decided on merits.

4. The Ld. DR, on the other hand strongly opposed condonation application filed by the assessee and submitted that the facts brought out by the Ld.CIT(A) clearly proves the fact that the assessee is a habitual non co-operative to the proceedings, which is evident from the fact that despite number of opportunities were given to the assessee, he did not appear before the Ld.CIT(A) and said lapse is continued before the Tribunal. Therefore, there is no merit in the reasons given by the assessee for delay in filing appeal and hence, the delay in filing appeal should not be condoned.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The Tribunal has inherent powers to condone the delay in filing of appeal after the expire of the relevant period referred to in sub section(3) or sub section (4) of section 253 of the I.T.Act, 1961, if, it is satisfied that there was sufficient cause for not presenting the appeal within that period. The words sufficient cause has not been defined under the Act, but various courts have interpreted to mean that there should be some reasons beyond the control of the assessee, which prevented to file appeal within the time prescribed under the Act. As per the interpretation of the various courts, certain reasons would come under the definition of reasonable cause like ill-health of the concerned persons, who is aggrieved or his counsel is one of the reasons for condone, the delay in filing appeal. Further, the legislature has conferred power to condone delay by enacting section 5 of the Limitation Act, 1963, in order to enable the courts to

do substantial justice to parties by disposing off matters on merits. At the same time, the courts has also held that every days of delays must be explained by the person. In this legal back ground, if you examine the facts of the present case, we find that the assessee has given reasons for not filing appeal within the time allowed under the Act, as per which the father of the assessee, Shri Mohanlal M.Shah, aged '65' years, who look after the tax matters of the assessee was admitted to hospital from 26/12/2018 to 29/12/2018 for spinal problem due to which, he could not attend the case for filing appeal before the Tribunal. However, immediately after recovery from his illness, he has filed appeal, which resulted in delay of '68' days in filing appeal before the Tribunal. If you go through, the reasons given by the assessee along with necessary supporting evidences filed to justify the reasons given for such delay, we find that the reasons given by the assessee for not filing appeal within the time allowed under the Act comes under the ambit of reasonable cause, as provided under the Act and as interpreted by the various courts. Therefore, we are of the considered view that there is a reasonable cause for not filing appeal within the time allowed under the Act, which is sufficient to condone the delay in filing of appeal. We, further noted that the Hon'ble Supreme Court, in the case of Collector of land acquisition vs Mst.Katiji & Ors. 167 ITR 471 has very categorically held that when, substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other aside cannot claim to have a vested right injustice being done, because of a non-deliberate delay. The Hon'ble Supreme Court, in the case of N. Balakrishnan v. M.Ramamurthy (1998) 7 SCC 123, has held that a court knows that refusal to condone delay would result in foreclosing

a suitor from putting forth his cause. There is no presumption that delays in approaching the court is always deliberate. From the ratios laid down by the Hon'ble Supreme court in above case, it is very clear that when, the assessee has given sufficient reasons for not filing appeal with plausible explanation, then the delay in filing appeal can be condoned, if the other side cannot claim to have a vested right injustice being done, because of a non deliberate delay. Therefore, we are of the considered view that this is a fit case for condonation of delay in filing of appeal and hence, we condone the delay in filing of appeal and admit the appeal for hearing.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. After hearing both the sides, we find that although, the Ld.CIT(A) has discussed the issues on merits, but has disposed-off appeal filed by the assessee for non appearance of the assessee as on the date of hearing despite number of opportunities given on various occasions, without hearing the assessee. It is a settled position of law that it is the obligation of the person, who filed appeal to go before the authority and file necessary details to justify its case. At the same time, if the assessee could not attend the hearing for some reasons, it is the duty of the authorities to dispose of the appeals on merits, on the basis of material available on record instead of dismissing the appeal on technical grounds for non prosecution of appeal by the assessee. In this case, although, the Ld.CIT(A) has discussed the issue on merits raised before him, but such findings has been recorded behind the back of the assessee without confronting the reasons given by the Ld. AO for making various additions. Therefore, we are of the considered view that the issue needs to go

back to the file of the Ld.CIT(A) to give one more opportunity of hearing to the assessee to advance its arguments. Hence, we set aside the appeal to the file of the Ld.CIT(A) to decide afresh in accordance with law. Needless to say, the assessee shall go before the Ld.CIT(A) and file necessary evidences to justify its case without seeking any adjournments. In case, the assessee seeks adjournments without any valid reasons, then the appellate authority is free to dispose of appeal in accordance with law.

7. In the result, appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on this 20/05/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/05/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai