

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1531/Ahd/2019

(निर्धारण वर्ष / Assessment Year : 2015-16)

Aanya Developers Survey No.326/1, Block No. 450, Opp. Aarohi Homes, Bopal, Ahmedabad - 380015	बनाम/ Vs.	Asstt. Commissioner of Income Tax Circle-3(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOFA8827H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Afaq Saiyed, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri G. C. Daxini, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	07/01/2021
घोषणा की तारीख /Date of Pronouncement	22/01/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Ahmedabad ('CIT(A)' in short), dated 31.10.2018 arising in the assessment order dated 16.11.2017 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. As per the grounds of appeal filed by the assessee, the assessee is aggrieved by the disallowance of Rs.6,30,959/- towards interest paid to certain lenders on unsecured loan availed by the assessee.

3. When the matter was called for hearing, the learned counsel for the assessee submitted at the outset that there is a delay of 280 days in filing the appeal for AY 2015-16 before the ITAT against the order of the CIT(A). In this connection, the learned counsel referred to the affidavit filed by the assessee alongwith a letter dated 5th March, 2020 and urged for condonation of delay and disposal of the appeal on merits. Referring to the contents of the affidavit, the learned counsel pointed out that the assessee firm was closed due to lack of business and office continued to remain closed resulting in disarray. It was further pointed out that the delay occurred is not intentional or deliberate and the delay occurred has not caused any prejudice to the Revenue *per se*. No malafide can be imputed for such delay. The learned counsel referred to the decision rendered by the Hon'ble Supreme Court in the case of *Collector of Land Acquisition vs. Mst. Katiji & Ors. 167 ITR 471 (SC)* to contend that the substantial justice deserves to be preferred over the technical glitch committed by the assessee in belated filing in the facts of the case.

4. On merits, learned counsel for the assessee pointed out that interest expenditure on unsecured loan in the impugned AY 2015-16 was disallowed for the reason that unsecured loan itself were not found bonafide on the counters of Section 68 of the Act by the AO in the earlier AY 2013-14. The disallowance of interest on such loans is only consequential. In this regard, the learned counsel referred to the decision of the co-ordinate bench of Tribunal rendered in the case of assessee for AY 2013-14 in *ITA No.2069/Ahd/2018* order dated 26.06.2019 to submit that the unsecured loans on which the interest expenditure has been incurred and is subject matter of present litigation, has been held to be bonafide on facts by the Tribunal.

Hence, consequential disallowance of interest in AY 2015-16 is no longer good in law.

5. The learned DR for the Revenue, on the other hand, submitted that the assessee does not deserve condonation of delay as the affidavit filed by the assessee is vague and without any supporting affidavit of the counsel of the concerned representative roped in by the assessee for justification of delay. The learned DR further submitted that the appeal has been filed belatedly after the receipt of decision rendered by the co-ordinate bench and thus action of the assessee is not bonafide as wrongly asserted. The learned DR referred to the decision of the Hon'ble Bombay High Court in *Somerset Place Co-operative housing society Ltd vs. ITO 374 ITR 307(Bom)* to contend that it is not permissible for the assessee to assail the order of the CIT(A) at a belated stage after the assessee succeeded in the earlier year before the Tribunal.

6. In rejoinder to the objection of the Revenue on condonation of delay, the learned counsel for the assessee submitted that the facts in *Somerset Place (supra)* relied upon by the Revenue is totally distinguishable on facts. It was contended that the facts in *Somerset Place(supra)* are gross, worse and peculiar. In that case, there was a delay of more than five years and the assessee was found to have taken voluntary decision not to assail the order of the Tribunal and accepted the same but, however, filed an appeal only because assessee succeeded on same issue five year later. It was submitted that, in contrast, the office of the assessee in the instant case was closed and was without operation which resulted in bonafide delay of less than one year.

7. On appraisal of the arguments from both sides, we find that sufficient cause, when seen liberally, seems plausible in the instant case for the reason that the activity of the assessee was not in operation. Although, there appears to be some negligence on the part

of the assessee in not pursuing matter in respect of filing of appeal after the order of the CIT(A) was delivered but negligence does not appear to be of such a degree that the appeal can be dismissed being barred by limitation when seen in conjunction with the fact that the case of the assessee on merits is ostensible and deserves to be allowed without any demur and without any incisive application of mind. The delay occurred in appeal has also not shown to have caused any serious prejudice to the Revenue. The case on merit is tenable *prima facie* without any need for discussion. The disallowance of interest requires to be reversed without any deliberation as the very foundation for which such disallowance was carried out, has ceased to exist. Thus, when seen on a broader conspectus, the delay of 280 days deserves to be condoned in the instant case and the appeal of the assessee deserved to be allowed on merits.

7. In the result, the captioned appeal of assessee is allowed.

This Order pronounced on 22/01/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 22/01/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।