

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA Nos.382 & 383/SRT/2019

(Assessment Years: 2009-10 & 2011-12)

(Hearing in Virtual Court)

Mahesh Tulsidas Patel Flat No.13B2, Shantiniketan, Apartment, Sumul Diary Road, Surat-395004 New Address: At & P.O. Ambaliara Tal. Bayad, Dist. Aravalli, Pin.383242 email advhiteshkumarjain@gmail.com [PAN : ADSPP 3124 B]	Vs	Income Tax Officer, Ward- 3(2(5), Rom No.608, 6 th Floor, Aaykar Bhawan, Majura Gate, Surat- 395002
Appellant/ assessee		Respondent/ revenue

Appellant by	Shri Hitesh Kumar Jain, Advocate
Respondent by	Ms Anupama Singla, Sr. DR
Date of hearing	06/10/2021
Date of pronouncement	06/10/2021

ORDER

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-3, Surat, dated 30.05.2019 for Assessment Years (AY) 2009-10 & 2011-12 respectively. In ITA No. 382/SRT/2019 the assessee has challenged the additions in quantum assessment for A.Y. 2009-10 and in ITA No. 383/SRT/2019, the assessee has challenged the order of penalty levied under section 271(1)(c) for A.Y. 2011-12. In both the appeals, the Ld. CIT(A) passed *ex parte* order. Thus with the consent of both the parties both the appeals, clubbed, heard together and are decided by the consolidated order.

2. On perusal it reveals that registry has issued the fact memo pointing out that both the appeals filed by assessee after four days beyond the period of limitation. The assessee has filed affidavit for condonation of delay. In the affidavit, the assessee contended that the assessee was in business of cheque discounting, suffered heavy losses and had to close down his business and shifted to his native place to pursue agricultural activities. It is further contended that he engaged Counsel for appearing before the Ld. CIT(A). However, due to non-payment of professional fees, on time, the Ld. Counsel not appeared before Ld. CIT(A), which resulted in passing the ex parte order. Appeal is filed soon after coming to know that Ld. CIT(A) has passed ex parte order. Ld. Authorized Representative (AR) for the assessee made his submission on similar lines. The Ld. AR for the assessee has prayed for taking a lenient view as the assessee is interested in pursuing his both appeals. The assessee has a good case on merit and delay of filing of appeals was not intentionally and more so there is a very small delay of four days in both the appeals.
3. On the other hand, Ld. Sr. Departmental Representative (DR) for the Revenue submits that bench may take decision for condoning the delay in accordance with law.
4. We have considered the rival submission of both the parties and perused the contents of affidavit filed in support of condonation of delay in filing both the appeals. Considering the contents of the affidavit as noted above and the submission of Ld. AR of the

assessee, we find that the assessee has explained the delay in filing of both appeals. Further the delay is not intentional. Thus, the delay in filing both the appeals is condoned.

5. Now adverting to the facts of the case in ITA No.382/SRT/2019.The assessee has filed his return of income for the assessment year 2009-10 on 29.03.2010 declaring income of Rs.1,67,143/-. Initially, the case was processed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').Subsequently, the case was re-opened u/s 147 of the Act. Notice u/s 148 of the Act dated 31.03.2016 was served upon the assessee. The case was re-opened on the basis of information that proprietor of M/s Trident Tulsi Trading Commission., M/s Shree Asha Traders and M/s Shubham Corporation are engaged in business of cheque discounting. The assessee also admitted in his letter dated 03.08.2016 that assessee is doing such business through proprietor concern M/s Shubham Corporation and M/s Shree Asha Traders. The Assessing Officer obtained information from bank accounts u/s 133(6) of the Act, wherein it was reported that the assessee has carried out business of more than Rs.12 crores. On verification of profit and loss account, Assessing Officer found that assessee has shown gross profit of Rs.1.80 lakh. The assessment of assessee was completed u/s 143(3) r.w.s. 147 of the Act on 05.12.2016 and the Assessing Officer made addition on account of unexplained cash credit of Rs.10.50 lakh and addition on account of undisclosed commission income of Rs.7.34 lakh

and addition of Rs. 1 lakh on agricultural income. Aggrieved by the additions, the assessee filed appeal before Ld. CIT(A). The Ld. CIT(A) dismissed the appeal in ex parte order by taking view that despite granting three opportunities an no compliance was made on the part of assessee.

6. Similarly, in appeal for AY 2011-12, the Assessing Officer levied penalty u/s 271(1)(c) of the Act of Rs.19,80,200/- vide order dated 08.03.2017. Aggrieved by the order of penalty, the assessee filed appeal before Ld. CIT(A). The Ld. CIT(A) dismissed the appeal in ex parte proceedings by taking view that despite the granting four opportunities assessee neither appeared nor made any compliance. In the aforesaid background, the assessee filed both the appeals before the Tribunal.
7. We have heard the submissions of Ld. AR for the assessee and Ld. Sr. DR for the Revenue and perused the order of authorities below. The Ld. AR of the assessee submits that due to heavy losses, the assessee had closed down his business and to shifted to his native place. The assessee engaged a Counsel to look after his appeals before Ld. CIT(A). However, the said counsel not appeared before Ld. CIT(A) as assessee was unable to pay his professional fees. The Ld AR of the assessee submits that assessee has a good cases on merit and prays for one more opportunity to contest the cases on merit. The Ld. AR of the assessee undertake on behalf of assessee to be more vigilant in future. In alternative submission Ld. AR for the assessee submits that the order passed

by the Ld. CIT(A) is not on merit of the case and non-speaking order. The order passed by the Ld. CIT(A) is liable to be set aside on this ground as well.

8. On the other hand the ld. Sr. DR for the Revenue submits that the assessee was given ample opportunity as recorded in para 3 of the order passed by the ld. CIT(A). The assessee failed to comply with the notice issued by the ld.CIT(A). The assessee has never informed about his ill health. The ld. CIT(A) left with no option, except to proceed to decide the issue and in absence of any evidence or explanation affirm the action of AO. The learned Sr DR for the revenue prayed for dismissal of the appeal. On the alternative submission In alternative submission, the ld. Sr. DR for the Revenue submits that in case the Hon'ble bench deems it appropriate to restore the grounds of appeal to the file of ld. CIT(A), the assessee be directed to be vigilant and not to default in future in attending the proceedings and to waste the time of public authorities/ld.CIT(A). The assessee should not take the proceeding before the first appellate authority in casual manner.
9. We have considered the rival submission of ld. AR for the assessee and the DR for the revenue and have gone through the orders of lower authorities. We find that the ld. CIT(A) fixed the hearing on three occasions as mentioned in para 5.1.1 of the impugned order. Before us the learned AR for the assessee submitted that the assessee was facing financial crises due to losses in business and engaged counsel but could not arrange his professional. And

that the assessee is really interested in pursuing his appeals on merit if one more opportunity is given. Considering the peculiar facts of the case, we are of the view that the assessee deserve one more hearing at the stage of first appellate stage.

10. We further find one more reason to restore the case to the file of ldCIT(A), as the Ld. CIT(A) instead of considering the merit of the case dismissed both the appeal in non-speaking order, which are not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the Ld. CIT(A) while deciding the appeal is required to pass order on points of determination that is grounds of appeals, decision therein on and reasons for such decision. Accordingly the grounds of appeal raised by the assessee in both the appeals are restored to the file of learned CIT(A) to decide all the grounds of appeal afresh.
11. Needless to order that before passing the order the ld. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the ld.CIT(A) as and when the date of hearing and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. The assessee is further directed to provide his e-mail address to make communication with him or his representative. The assessee shall file his latest address and e-mail address or e-mail address of his representative, on receipt of this order in the office of assessing officer as well as before

jurisdictional CIT(A). Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

12. In the result, the both the appeals of the assessee's are allowed for statistical purposes. A copy of this instant common order be placed in the respective case file(s).

The order pronounced on 06.10.2021 at the time of hearing the appeal in virtual hearing.

Sd/-

(DR. A. L. SAINI)

ACCOUNTANT MEMBER

Surat, Dated: 06/10/2021

Dkp Outsourcing Sr.P.S

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

By order

/ / TRUE COPY / /

Asstt. Registrar, ITAT, Surat