

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" A " BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**And**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos. 1191 & 1210/AHD/2019  
निर्धारण वर्ष/Asstt. Years: 2011-12

Ketankumar Arvinbhai Amin, 59/A, Dwarkesh Nagar, Nr. Mansarovar, Chhani, Vadodara.  <b>PAN: AHSPA8963F</b>	Vs.	I.T.O., Ward-1(2)(1), Vadodara.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Anil B. Thakkar, A.R
Revenue by :	Shri S.S. Shukla, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **11/10/2021**  
घोषणा की तारीख / **Date of Pronouncement**: **27/10/2021**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned two appeals have been filed at the instance of the Assessee against the orders of the Learned Commissioner of Income Tax (Appeals)-1, Vadodara. The ITA No.1191/AHD/2019 is a quantum appeal arising in the matter of assessment order passed under s. 144 r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") and ITA No. 1210/AHD/2019 is a penalty

appeal passed u/s 271(1)(c) of the Income Tax Act, 1961 relevant to the Assessment Year 2011-12.

**ITA No.1191/Ahd/2019 for A.Y. 2011-12**

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

*Learned Commissioner of Income Tax erred in confirming the addition of Rs.1170000 made by the Assessing Officer u/s.69A of the Income Tax Act, 1961.*

*The Appellant craves leave to add, alter or amend above ground of appeal at or before final hearing of an appeal.*

3. At the outset, we note that there was a delay in filing the appeal by the assessee for 775 days. The assessee has filed application pleading to condone the delay which was supported by the notarized affidavit dated 21 August 2021. It was pleaded that there was sufficient cause which prevented the assessee in filing the appeal within the time prescribed under the provisions of law.

4. In the condonation petition, it was submitted that the assessee is qualified only up to 9<sup>th</sup> standard and engaged in the agricultural activity. Thus the assessee was not aware of the provisions of law.

4.1 Besides the education of the assessee, it was also submitted that the assessee has entered into the registered banakhat for the sale of agricultural land to Shri Shantilal R Patel & others dated 2 December 2006 but the same could not be materialized on account of some dispute. Subsequently, the assessee also had some dispute with his brother, Shri Rakesh Bhai Arvindhbai Amin regarding to the partition of the said land which came to be resolved on 30 September 2010. Likewise, the same land was sold through registered sale deed to Shri Anilbhai B Patel and others dated 21 October 2010. Thereafter, a suit was filed by Shri Shantilal R Patel & others in the court of law against the sale of the land to Shri Anilbhai B Patel dated 7 December 2010. Such dispute was amicably settled among all the parties dated 9 August 2018. Thus it was contended by the assessee that in all these

years he was engaged in legal and the family dispute. Therefore, he could not take up the income tax proceedings properly and effectively.

4.2 Furthermore, it was submitted that as a result of all these litigations, the assessee developed the mental depression, diabetes and chronic renal failure. The kidney of the assessee at present was working less than 35% of its capacity.

4.3 It was also brought to our notice that the assessee has already paid the due amount of taxes and the penalties levied upon him under the provisions of law.

4.4 In view of the above the assessee vehemently requested to condone the delay in filing the appeal as it has happened beyond the control of his capacity.

5. On the contrary the learned DR submitted that there is inordinate delay in filing the appeal and vehemently opposed to condone the same.

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the primary reason for not filing the appeal by the assessee on time was that he was occupied in some legal as well as family dispute. The assessee in support of the legal dispute has filed the affidavit, copy of the partition deed, sale deed, the judgment of Hon'ble District Civil Court Vadodra and the High Court, withdrawal of the appeal on account of mutual settlement. All these facts have not been doubted by the Revenue. As such, nothing was brought on record by the Revenue contrary to the contents mentioned in the affidavit filed by the assessee in connection with the donation of delay. Thus, in the light of the above facts, it can be assumed that the contents of the affidavit are to be correct.

6.1 Admittedly, there is inordinate delay in filing the appeal by the assessee but the length of delay cannot be a deciding factor to admit or not to admit the appeal.

As such, there is no hard and fast rule which can be laid down for condoning the delay in filing the appeal. As such the discretion for condoning the delay can be exercised depending upon the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.

6.2 We also note that the case of the assessee on merit appears to be in favour of the assessee. But the assessee could not appear before the authorities below to present his case as he was busy in family and legal disputes which have been elaborated in the preceding paragraph. There was the affidavit filed by the assessee explaining the reasons for the delay in filing the appeal before us. However, the Revenue has not filed any counter-affidavit to deny the submission made by the assessee.

6.3 It is also important to note that Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down certain principles for considering the condonation petition for filing the appeal which are reproduced hereunder:

*(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late (2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.*

*(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.*

*(4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

*(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

*(6) It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

6.4 From the above judgment of the Hon'ble Apex Court, we note that the substantial justice deserves to be preferred rather than deciding the matter on the basis of technical defect.

6.5 We also note that there is no allegation from the Revenue that the appeal was not filed within the time by the assessee deliberately. Therefore, we are inclined to prefer substantial justice rather than technicality in deciding the issue. In view of the above and after considering the facts in totality, we condone the delay in filing the appeal by the assessee and proceed to adjudicate the issue raised by him on merit.

6.6 The only issue raised by the assessee is that the learned CIT –A erred in confirming the addition made by the AO on account of unexplained investment under the provisions of section 69-A of the Act for ₹ 11,70,000.00 only.

6.7 At the outset we note that the assessee could not appear either before the AO or the learned CIT (A) to represent his case. Accordingly, the addition was made by the AO for ₹11,70,000 which was subsequently confirmed by the learned CIT (A) in the absence of any sufficient documentary evidence contrary to the allegations framed by them (authorities below). In this regard, we have perused the assessment order framed under section 147 read with section 143(3) of the Act dated 19-12-2018 wherein it has been categorically admitted the receipt of ₹30 lakhs in cash on different dates by the assessee. The copy of the assessment order is placed on record. Accordingly it appears that there was the receipt of cash against the sale of land which has been used for making the deposit in the bank account. However, all these facts have not been presented by the assessee before the authorities below. Therefore, in the interest of justice and fair play we set aside the issue to the file of

the AO for fresh adjudication as per the provisions of law after giving reasonable opportunity of being heard to the assessee.

6.8 It is not out of place to mention that we direct the assessee to extend full cooperation during the assessment proceedings before the AO and he should not seek any adjournment without any sufficient cause. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

6.9 In the result the appeal filed by the assessee is allowed for the statistical purposes.

**Coming to the ITA No. 1210/Ahd/2018 for A.Y. 2011-12.**

7. The assessee has raised the following grounds of appeal:

*The Learned Commissioner of Income Tax (Appeals) erred in upholding penalty of Rs.211150 levied u/s.271(1)(c) of the Act. He should not upheld the same considering the facts of the case.*

*Your Honour assessee craves leave to add or amend above ground of appeal at of before the final hearing of an appeal.*

8. At the outset we note that the appeal in under consideration relates to the penalty levied under section 271(1)(c) of the Act which is arising in consequence to the addition made under the quantum proceedings. Admittedly, there was a delay in filing the appeal before us. However we have condoned the delay in filing the appeal by the assessee with respect to the quantum addition vide paragraph number 6 to 6.9 of this order. For the detailed discussion, please refer the relevant paragraph. The reasons for delay in filing the appeal are the same as in the case of the quantum appeal, accordingly we condone the delay of the impugned appeal. Thus, we proceed to adjudicate the issue on merit.

9. Admittedly, the issue raised by the assessee in this appeal relates to the quantum addition made for ₹11,70,000.00 only. The quantum appeal has been set

aside to the file of the AO for fresh adjudication as per the provisions of law in ITA No. 1191/AHD/2019 vide No. 6 to 6.9 of this order. Thus, we are also setting aside the penalty appeal to the file of the AO to decide afresh in accordance with the provisions of law and after considering the outcome of the quantum appeal as discussed above. Hence, the ground of appeal of the assessee allowed for the statistical purposes.

9.1 In the result, the appeal filed by the assessee is allowed for the statistical purposes.

10. In the combined result both the appeals of the assessee are **allowed for statistical purposes.**

**Order pronounced in the Court on 27/10/2021 at Ahmedabad.**

**Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

(True Copy)  
27/10/2021