

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No. 876/Mum/2020
 (निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Dinesh Sunderji Shah 13, Jayanti Apartments J. Dossa Road, Mulund West, Maharashtra-400 080	बनाम/ Vs.	ITO – 15(1)(2), R. No. 15B, Ground Floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020
स्थायी लेखासं. / जीआइआरसं. / PAN/GIR No. AAFPS-3093-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Dinkle Haria & Shri Ashok Sharma – Ld. ARs.
Revenue by	:	Shri Rajat Mittal – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	28/10/2021
घोषणा की तारीख / Date of Pronouncement	:	01/11/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order of Ld. Commissioner of Income-Tax (Appeals)-24, Mumbai [CIT(A)], dated 31/08/2017 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Act on 28/12/2016. In the assessment, the assessee has been saddled with addition of unexplained investment for Rs.87.84 Lacs which has been confirmed in the appellate order. The impugned order is an ex-parte order since the assessee failed to appear before first appellate authority.

2. A delay of 820 days has been noted in the appeal, the condonation of which has been sought by the assessee on the strength of condonation petition dated 30/01/2020 which is supported by the affidavit of the assessee. The contents of the affidavit read as under: -

I, Dinesh Sunderji Shah aged about 53 Years residing at 2602, Evita Central Avenue, Hiranandani Gardens, Powai, Mumbai - 400076 declare on solemn affirmation as under:

1. That I am assessed to tax vide PAN **AAFPS3093N**.
 2. That as regards Assessment Year 2009-10 order was passed u/s 144 on 23/06/2017 making addition of Rs 87,84,848/- being unexplained investment u/s 69.
 3. That appeal was preferred against same to CIT (A)-24. But same was dismissed on account non-attendance as full details were not available.
 4. The issue involved was payment of premiums for various life insurance policies.
 5. Ours is joint family involved in business and investment activity jointly.
 6. My uncle Shri Devchand Shah was looking after matter of investment in life insurance policies.
 7. Though the matter pertained to FY 2008-09 all the proceedings started in 2016 when assessment was reopened u/s 148.
 8. In the meanwhile my uncle expired on 28.11.2015.
 9. In the absence of proper details I could not provide the same to my Authorized Representative. And as such he could not attend without proper details. Nor did he guide about course of action to be taken in such situation. And both proceedings one before A O and other before CIT (A) were completed ex-parte.
 10. I than tried to locate the same from my various accounts and also same from related insurance companies but it took time as matter was old.
 11. The last detail I got from Aditya Birla Sun Life Insurance Company Ltd vide their letter dated 17.01.2020.
 12. From the details gathered it was learnt that out of total addition of Rs.87,87,848/- only Rs 37,43,396/- pertained to payments made during FY 2008-09. Balance was either in subsequent periods or was paid and returned in the same year. And details and source of actual payment of Rs 37,43,396/- are also available.
 13. Order from CIT (A) dated 31.08.2017 was received on 05/09/2017. However due to reasons mentioned above and circumstances beyond control, Appeal could not be filed earlier and thus there is delay of 820 days.
 14. I have cooperated all along and have paid a sum of Rs 34,00,000/-being part payment of demand.
- In view of above facts I request your honour to consider matter sympathetically and condone the delay of 820 days in filing of Appeal.

After going through the contents of the affidavit, the bench formed an opinion that there was reasonable cause for delay and the delay was to be condoned keeping in view the fact that the assessee is a resident

individual. Therefore, the delay is condoned and the appeal is admitted for adjudication on merits.

3. The Ld. AR, in the background of affidavit, placed on record additional evidences and pleaded for admission of the same. The Ld. AR also submitted that the assessee is in a position to substantiate his case before lower authorities. The Ld. DR, on the other hand, submitted that the matter may be restored back to the file of Ld. CIT(A).

4. Keeping in view the submissions made before us and in view of the fact that additional evidences would have material bearing to the assessment, these evidences are admitted and the matter is restored back to the file of Ld. CIT(A) for fresh adjudication in the light of these evidences. The assessee is directed to substantiate his claim forthwith and not to seek unnecessary adjournments in the matter failing which Ld. CIT(A) shall be at liberty to proceed with the adjudication of the appeal on the basis of material on record.

5. The appeal stand allowed for statistical purposes.

Order pronounced on 01st November 2021

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/11/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.

Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	Directly Typed on Computer / Laptop		Sr.PS/PS
2	Draft dictated on	Not Applicable/		Sr.PS/PS
3	Draft Placed before author	Not Applicable		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS	02.11.2021		Sr.PS/PS
7	Order pronouncement on	01.11.2021		Sr.PS/PS
8	File sent to the Bench Clerk	02.11.2021		Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			