

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD  
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT &  
SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

I.T.A. No. 1204/Ahd/2019  
(Assessment Year: 2011-12)

Varun Kamalchand Jain 10, Urvashi Apartment, Bajrangdas Bapu Ashram, Opp. Chanmak chuna, Highway Road, Mahavirnagar, Ahmedabad-380024	Vs.	ITO-5(3)(5), Ahmedabad
[PAN No. AIWPIJ8330L]		
(Appellant)	..	(Respondent)

Assessee by	:	Shri Himanshu Gandhi, AR
Revenue by	:	Shri S. S. Shukla, Sr. DR

Date of Hearing	23.12.2021
Date of Pronouncement	10.01.2022

**ORDER**

**PER SMT. ANNAPURNA GUPTA - AM:**

The present appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-5, Ahmedabad, (in short referred to as CIT(A)), dated 27.05.2019 passed under Section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2011-12.

2. The grounds raised by the assessee are as under:

“1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not condoning the delay of filing appeal when the assessee suffered from reasonable ground and in support of same affidavit of chartered accountant was also filed.

2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming order u/s 144 r.w.s. 147 which is passed against the principal of “best judgement assessment”.

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3. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*”

3. During the course of hearing before us Ld. Counsel for the assessee pointed out that its appeal before the Ld. CIT(A) against the order passed by the Ld. AO under Section 144 r.w.s. 147 of the Act dated 15.11.2018, making an addition of Rs. 13,14,500/- on account of unexplained cash deposits in bank, was dismissed merely for the reason that the appeal was filed delayed and the delay was not condoned by the Ld. CIT(A). The Ld. Counsel appearing for the assessee pointed out that the delay was of 53 days and the assessee had explained the same in its application filed before the Ld. CIT(A) which stands reproduced at Para 3.1 of the CIT-A's appeal order is as under:

*“3.1. As per the provisions of Section 249(2) of the I.T. Act the appellant should have filed the appeal within 30 days from the date of the service of the order i.e. on 14.12.2018 but the same has been filed on 05.02.2019 with the delay of 53 days . The appellant filed condonation of delay in Form No.35 at column NO.15 and the relevant portion of the same is reproduced as under:-*

*“The appellant prays your honour for condonation of delay in filing the appeal. We would like to inform your honor that eh appellant submits that due to circumstances beyond the control of the assessee there has been a delay in presenting the appeal to the CIT Appeals. The delay in presenting the appeal is neither intentional nor deliberate but an unavoidable circumstances as narrated hereunder. It is respectfully submitted that the copy of the assessment order against which the appeal is being presented was received by the appellant on 20.11.2018. As per the provisions of the section of the I.T. Act the assessee is required to present the appeal within 30 days of receipt of assessment order that is before 20.12 2018. Thus there is a delay of 47 days in presenting this appeal. It is respectfully submitted that the delay in presenting the appeal is neither intentional nor deliberate. The delay is due to reasons beyond the control of the assessee. On receipt the assessment order and demand notice, the assessee approached a tax consultant for filing the appeal. On discussion, assessee has given copies of notice and order to tax consultant and asked him to file an appeal. But due to some misunderstanding and communication gap between appellant and tax consultant, an appeal is not filed by a tax consultant. The assessee was under impression that appeal has been filed and tax consultant was under impression that assessee has approached another consultant. Declaration under affidavit by tax consultant and assessee is obtained and same can be provided during the course of proceedings. Appellant came to know the same when notice of attaching his bank accounts was received by him that the appeal has not been filed by the tax consultant. Assessee immediately opted for another tax consultant for filing the appeal aggrieved on the assessment order. Hence the appellant was not*

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*having any malafide intention of not filing the appeal. In view of the facts and circumstances mentioned above, it is submitted that the delay in filing the appeal may be condoned under the I.T. set and for this act of kindness, the appellant shall ever remain much obliged. Moreover we request your honor to condone the delay as there was no issue from the side of the assessee."*

4. Referring to the above Ld. Counsel for the assessee stated that sufficient cause for the delay had been made out before the Ld. CIT(A) on account of misunderstanding and communication gap between the assessee and the tax consultant and an affidavit of the Counsel admitting to the misunderstanding was also filed, but the Ld. CIT(Appeal) dismissed the same stating that the assessee had taken a vague and unsupported plea for the delay. Relevant findings at Para 3.4 of the CIT's order was pointed out to us as under:

*"3.4. In view of the above judicial pronouncements, the basic principle emerges that the delay should be bonafide and there should not be any negligence on the part of the appellant. However in the appeal under consideration, the appellant has taken the vague and unsupported plea for the delay and which is not verifiable from the records. The appellant has not submitted any evidence either along with the appeal or during appellate proceedings. Therefore, the delay made in filing the appeal does not deserve to be condoned and hence appellant's request for condonation is not entertained and rejected. Therefore the appeal is dismissed on this count."*

5. Ld. Counsel for the assessee stated that in view of the sufficient cause for the delay adduced by the assessee supported by the statement on oath of the Counsel with whom the understanding arose, the delay ought to have been condoned. The plea of the Ld. Counsel for the assessee accordingly was that the delay be condoned and the appeal restored back to the CIT(A) for adjudication on merit.

6. The Ld. DR on the other hand opposed the contention of the assessee relying on the order of the Ld. CIT(A).

7. We have considered the contention of both the parties and have also gone through the order of the Ld. CIT(A). We find that the Ld. CIT(A) has

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rightly highlighted various judicial pronouncements laying down the principle to be followed for condoning delays in filing appeals, i.e. the delay should not be mala fide and there should not be any negligence on the part of the assessee. But having said so, we are unable to agree with the findings of the Ld. CIT(A) that in the facts of the present case the delay could not be condoned on the basis of the said principles. As is evident, the delay is of a very small period of 53 days and the assessee has demonstrated that he had pro-actively pursued filing of appeal, having approached his consultant Shri Piyush Jain, CA for the same. But due to some misunderstanding the appeal was not filed by the said CA and it was only when the consultant was re-approached in February that the appeal was immediately filed thereafter. These facts have been confirmed on oath by the consultant himself, about the misunderstanding and miscommunication with the assessee pointing out that since a clear consent was not given by the assessee to him ,after had quoted fees for consultation, he was under the impression that the assessee had approached another consultant and it was only later when he was re-approached in February that he came to note that the appeal had not been filed . The assessee has also stated that he was under the impression that having given all necessary papers to the consultant, the appeal must have been filed but when he re-approached him he was aware that the appeal had not been filed. Therefore, it is a mere case of miscommunication and misunderstanding. The facts before us demonstrating that the assessee had approached a tax consultant immediately on receiving the Assessment Order and had again approached him to find out whether the appeal had been filed or not show that the assessee was actively pursuing the matter of filing the appeal and the delay was not intentional. Nor can any mala fide or negligence be attributable on the part of the assessee. In view of the principles culled out by the Ld. CIT(A) himself from various judicial

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pronouncements, therefore, we condone the delay finding there being sufficient and reasonable cause for the small delay of 53 days. Further the appeal is restored back to the Ld. CIT(A) to adjudicate the same on merits after hearing the assessee.

8. In the result, the appeal preferred by the assessee is allowed for statistical purpose.

<b>This Order pronounced in Open Court on</b>	<b>10/01/2022</b>
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Sd/-  
(RAJPAL YADAV)  
**VICE PRESIDENT**

Sd/-  
(ANNAPURNA GUPTA)  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/01/2022  
TANMAY, Sr. PS **TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad