

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.40/SRT/2018

(निर्धारणवर्ष / Assessment Years: (2007-08)

(Virtual Court Hearing)

Vinesh Ramanbhai Patel, C/o. Mr. Sarveshwar Sharma, G-210, Towe No.7, CBD Belapur Railway Station Complex, CBD Belapur, Navi Mumbai, Maharashtra-400614.	<b>Vs.</b>	The ITO, Ward-1, Bardoli.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AOHPP4075K</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by:Shri Sarveshwar Sharma, CA

Revenue by:Ms Anupama Singla, Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : 11/01/2022

घोषणाकीतारीख/**Date of Pronouncement** : 17/01/2022

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

The captioned appeal filed by the assessee, pertaining to Assessment Year 2007-08, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-1 [in short 'ld. CIT(A)'], Surat in Appeal No.CAS-1/273/2015-16dated 19.12.2016, which in turn arises out of an assessmentorder passed by Assessing Officer u/s 143(3) r.w.s 147of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') dated 03.02.2015.

2. The appeal filed by the assessee for AY.2007-08 is barred by limitation by 332 days. The assessee moved a petition requesting the Bench to condone the delay. The assessee has filed an affidavit explaining the reasons for delay which is reproduced below:

*"With reference to above cited matter we hereby submit the following facts for your kind consideration.*

*1. The assessee had to file the above appeal on 26.02.2017 whereas the same was filled on 22/01/2018 resulting in 332 days delay.*

*2. The delay filling is on account of the assessee was not in India for providing all the documents to the department.*

*We therefore, in the light of the above mentioned facts submit that the delay is due to the circumstances beyond the control of the assessee. Accordingly the assessee most respectfully prays before you to condone the delay and entertain the appeal.”*

3. Learned Departmental Representative (ld. DR) for the Revenue has objected that the delay should not be condoned.

4. We have heard both the parties on this preliminary issue and note that assessee is non-resident (individual) and the assessee could not provide the relevant documents and evidences to the Counsel on time, therefore delay has occurred. We are of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of litigation. Be that as it may, we have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others , reported in 167 ITR 471, (1988 SC 897) (7) has observed as follows:

*“4. When substantial justice and technical considerations are pitted against each other, 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. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We, therefore, condone the delay and admit the appeal for hearing.

6. At the outset itself, the ld. Counsel for the assessee assailed the impugned order by contending that assessee could not represent his case before Ld. CIT(A) and the order being an *ex parte* order, stood vitiated on account of violation of principle of natural justice. Learned Counsel submits that during the appellate proceedings, assessee could not receive the notice of hearing, therefore he could not appear before the ld. CIT(A). Hence, Learned Counsel contended that an another opportunity to contest the appeal before the ld. CIT(A) may be granted.

7. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the Id. CIT(A). We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced on 17/01/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule, 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सुरत/Surat/ दिनांक/ Date: 17/01/2022

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat