

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

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

आयकरअपीलसं./ITA No.10/SRT/2021

(निर्धारणवर्ष / Assessment Years: (2010-11)

(Virtual Court Hearing)

Govind Jitendra Nemani, 101, Ankur Apartment, Bhatat Road, Surat-395007.	Vs.	The ITO, Ward-3(1)(1), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAQPN5653C		
(Assessee)		(Respondent)

Assessee by: Shri Kiran K. Shah, CA

Revenue by: Shri Deependra Kumar, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 12/11/2021

घोषणाकीतारीख/Date of Pronouncement: 10/02/2022

आदेश / O R D E R

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

Captioned appeal filed by the assessee, pertaining to the Assessment Year (AY) 2010-11, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short “the Id. CIT(A)”] in Appeal No. CIT(A), Surat-3/10204/2017-18 dated 20.11.2016, which in turn arises out of an order passed by the Assessing Officer (AO) u/s 147 r.w.s 144 of the Income Tax Act, 1961 [hereinafter refer to as the “Act”].

2. Grounds of appeal raised by the assessee are as follows:

“1) The learned CIT(A) grossly erred in not giving reasonable opportunity of being heard and passed an ex party order.

2) The learned CIT(A) grossly erred in confirming addition of Rs.8,50,000/- as alleged to be “on money” paid to Shah Traders of Mumbai.

3) The learned CIT(A) grossly erred in assuming undisclosed investment of the entire amount though the appellant has ½ share in the property.

4) The learned CIT(A) confirmed the addition of Rs.8.50/- lacs despite the fact that an opportunity to cross examine the party concerned was not given.

5) The learned CIT(A) ought to have held that appellant has sufficient capacity to make investment in the property.

6) The appellant reserves right to add, alter and withdraw of any grounds of appeal.

3. The appeal filed by the assessee for Assessment Year 2010-11, is barred by limitation by 743 days. The assessee has moved a petition requesting the Bench to condone the delay. The assessee also filed an affidavit narrating the days of delay which is reproduced below:

AFFIDAVIT

I, the undersigned, Govind Jitendra Nemani, aged about 49 years, presently residing at 101, Ankur Apartment, Bhatar Road, Surat take an oath and state solemnly affirmation as under.

1. That I am staying at Mumbai since 2005 on account of my job and that I used to stay in Surat till 2005.

2. That the notices by the learned CIT(A) was send through ITBA Portal though there is reference of mail of AR CA Kiran Shah in E-Mail Address in Form No. 35

3. That the appeal order appears to have returned unserved as have been staying in Mumbai since 2005.

4. That I had filed an application under Vivadse Vishwash Scheme Vide Ack. No.: 888537740251220 and it was rejected because CIT(A) had already passed an order and that is how I came to know about the disposal of appeal.

5. That the order of the Hon'ble CIT(A) appears to be returned unserved so the order was taken from my portal and the appeal was filed.

6. That the delay in filing the appeal for about 16 months is on reasonable cause.

Date: 09.11.2021

Place: Surat."

4. Shri Kiran K. Shah, Learned Counsel for the assessee pleads that delay in filing the appeal was mainly occurred due to negligence of the Counsel of the assessee. Another reason of delay is that assessee is staying in Mumbai since 2005, therefore assessee could not receive the order of Id CIT(A) on time. Besides, the notices by the learned CIT(A) were sent through ITBA

Portal and there is reference of mail of AR, CA Kiran Shah, in E-Mail Address in Form No. 35, however, order of Id CIT(A) remain unserved due to technical mistake in e-mail id. Because of these reasons, the appeal could not file on time. The Ld Counsel prays the Bench that delay in filing the appeal may be condoned.

5. On the other hand, Learned Departmental Representative (ld. DR) for Revenue, has strongly objected to the prayer for condonation of delay and submitted that the delay cannot be condoned on the mere plea that due to negligence of the Counsel of the assessee, the appeal could not be filed on time. The ld DR also stated that just because the assessee shifted from Surat to Mumbai is also not a valid excuse. Therefore, ld DR stated that delay should not be condoned.

6. We have heard both the parties on this preliminary issue. We note that because of wrong advice of the Counsel of the assessee and negligence on the part of Counsel of the assessee, the assessee cannot be penalized. Besides, the assessee is staying in Mumbai since 2005, therefore assessee could not receive the order of ld CIT(A) on time. These circumstances resulted into delay. We note that period of limitation should not come as a hindrance to do substantial justice between parties; however, at same time, a party cannot sleep over its right ignoring statute of limitation and without giving sufficient and reasonable explanation for delay. We note that the reasons given in the above noted affidavit for condonation of delay are convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing the appeal. 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) 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.”

7. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. Therefore, in the interest of justice the delay should be condoned. We, therefore, condone the delay and admit the appeal for hearing.

8. Shri Kiran K. Shah, Learned Counsel for the assessee submits before us that impugned addition of Rs.8,50,000/- was made in the hand of the assessee and in the hand of assessee's wife Smt. Preti Nimani. Since, Smt. Preti Nimani's appeal was pending before the ld. CIT(A) and she adopted Vivad Se Viswas Scheme (in short 'VSVS') and paid the tax on the addition of Rs.8,50,000/-. Now, to tax the said amount of Rs.8,50,000/- in the hand of assessee is tantamount to double taxation on the same income, hence the issue may be remitted back to the file of the assessing officer for verification.

9. On the other hand, ld. DR for the Revenue fairly agreed that the issue should be remitted back to the file of the Assessing Officer for verification that whether the addition of Rs.8.50 lakhs was made by the AO in the hands of both, that is, in the hand of assessee and as well as in the hand of his wife.

10. We have heard both the parties and perused the material available on record. We find merit in the submission of assessee, and therefore, we are of the view that issue under consideration should be remitted back to the file of the assessing officer to verify the fact that addition of Rs.8,50,000/- was made by the AO in the hands of both, that is, in the hand of assessee and as well as in the hand of his wife. The assessee's wife adopted Vivad Se Viswas Scheme (vide VSVS No. 888537740251220 and see Form no.4) and paid the tax on the addition of Rs.8,50,000/-, and if the same addition of Rs.8,50,000/-, is made in the hand of assessee, then it should be deleted. The taxing the same amount in the hand of assessee amounts to double taxation and therefore, it should be deleted by assessing officer after necessary verification. Hence, we allow this appeal for statistical purposes.

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

Order is pronounced in the open court on 10/02/2022 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**

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

सुरत /Surat / दिनांक/ Date: 10/02/2022

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat