

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 181/AHD/2020  
निर्धारण वर्ष/Asstt. Year:2011-2012

Smt. Pravinaben Sureshbhai Thakkar, 15, Sharda Shivani, Dholka-387810, Tal. Dholka, Dist. Ahmedabad Gujarat  <b>PAN: ATFPT5432P</b>	Vs.	I.T.O, Ward-3(2)(4), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by	:	Shri Nishit Jesur, A.R
Revenue by	:	Shri Urjit Shah, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **15/02/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **28/02/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income (Appeals), Ahmedabad of even dated 26/09/2019 arising in the matter of assessment order passed under s. 143 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-12.

2. At the outset, we note that there was a delay of 77 days in filing the appeal by the assessee. There was condonation petition filed by the assessee dated 11<sup>th</sup> February 2022. It was contended that the chartered accountant was handling the income tax matter has shifted to Mumbai without handing over the necessary documents and any intimation to this effect. The learned AR in support of the contention of the assessee has also filed the affidavit of the assessee which is available on record. In view of above the Ld. AR for the assessee before us submitted that the delay in filing the appeal occurred due to unavoidable situation. Therefore the delay in filing the appeal should be condoned.

3. On the other hand the Id. DR opposed to condone delay but left the issue at the discretion of the bench.

4. We have perused the records and heard the rival submissions of both the sides. Considering the nature and the length of the delay and after placing reliance on the judgement of Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) where certain principles were laid down 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.*
- (2) '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.*
- (3) 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.*

(4) *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.*

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

4.1 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. We also note that there is no allegation from the Revenue that the appeal was not filed within the deliberately. Therefore, we are inclined to prefer substantial justice rather than technicality in deciding the issue. Thus, we condone the delay of 77 days in filing the appeal and proceed to hear the appeal on merit for the adjudication.

***Now we proceed to adjudicate the matter on merit:***

5. At the outset, it was perceived from the order of Ld. CIT(A) that the several notices were issued and served upon the assessee for fixing the date of the hearing and last date of hearing of the appeal was fixed on 19.09.2019 but in none of the occasion anybody appeared on behalf of assessee. Therefore, the Ld. CIT(A) passed an *ex parte* order due to non-appearance of the assessee by confirming the order of the AO. Against the impugned *ex parte* order of Ld. CIT(A), the assessee filed an appeal before us and pleaded that the impugned order has been passed without giving opportunity to the assessee. Accordingly, the Id. AR prayed before us to set aside the appeal to the learned CIT (A) for fresh adjudication as per the law. The Id. AR also assured that the assessee shall extend the full co-operation during the appellate proceedings.

5.1 We note that the principles of *audi alteram partem* is the basic concept of natural justice. The expression "*audi alteram partem*" implies that a person must be

given an opportunity to defend himself. This principle is *sine qua non* of every civilized society.

5.2 Indeed, the assessee after filing the appeal should be vigilant enough for pursuing it before the authorities but for this, if the assessee fails to pursue the appeal, the assessee cannot be penalized by confirming such huge addition without hearing its points of contentions. The mistake committed by the assessee and punishment given to it (the assessee) by sustaining the addition is not commensurate to each other in the given facts and circumstances. But the negligent/dilly-dally approach of the assessee before the Ld.CIT(A) cannot be neglected/ignored. Therefore, we are inclined to levy a cost of Rs. 1,000/- upon the assessee for adopting the negligent approach in the appeal proceedings before the Ld.CIT(A). Accordingly, we direct the assessee to deposit a sum of Rs. 1,000/- to the Income Tax Department prior to the commencement of hearing before the Ld. CIT(A).

5.3 In view of the, we are of the view that the assessee must be given one more opportunity of hearing to represent its case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Ld. CIT (A) for reconsideration all grounds of appeal after allowing proper opportunity of being heard in accordance with law.

5.4 Nevertheless, the assessee is aware of the case set up against it, accordingly it is directed to prepare its submission and cooperate in the appeal proceedings and its failure will entail confirmation of the impugned addition made by the AO. Hence, this ground of assessee's appeal stands allowed for statistical purpose.

6. In the result, the appeal of assessee is treated as allowed for statistical purpose.

**Order pronounced in the Court on 28/02/2022 at Ahmedabad.**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

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

Ahmedabad; Dated **(True Copy)**  
28/02/2022  
*Manish*