

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

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

आयकर अपीलसं./ITA No.36/SRT/2021

(निर्धारणवर्ष / Assessment Years: (2011-12)

(Virtual Court Hearing)

Pankaj Ramanbhai Bhakta, Hajira Works, Hazira Road, Taluka:Choryasi, Surat-394510.	Vs.	The Income Tax Officer, Ward-1, Bardoli.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABSPB2520R		
(Assessee)		(Respondent)

Assessee by: Shir Kiran K. Shah, AR

Revenue by: Ms Anupama Singla, Sr. DR

सुनवाईकी तारीख/ Date of Hearing : 02/03/2022

घोषणाकी तारीख/Date of Pronouncement : 07/03/2022

आदेश / ORDER

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

The captioned appeal filed by the assessee, pertaining to Assessment Year 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-1 [in short 'ld. CIT(A)'], Surat in Appeal No.CIT(A)-1, 10708/2018-19 dated 24.05.2019, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 147of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') dated 17.12.2018.

2. The appeal filed by the assessee for AY.2011-12, is barred by limitation by 21 months. The assessee filed an affidavit and petition for condonation of delay requesting the Bench to condone the delay. The contents of the affidavit filed by the assessee are as follows:

I, the undersigned, PANKAJ RAMANBHAI BHAKTA, aged about 50 years, presently residing of Bhakta Falia, At & Post. Malekpor, Tal. Palsana, Dist. Surat hereby solemnly declares on oath as under:

1. That all the notice, both on ITD system and address in Form No. 35 were sent on old address viz. Hazira Works, Hazira Road, and Tal. Choryasi, Surat as he was staying in the quarters provided by the employer.

2. That due to change of address, no notice could be served.

- 3. That in Form No. 35, the mail of AR K. K. Shah was given.*
- 4. That no notice was served on the mail of AR K.K. Shah.*
- 5. That the appeal could not be filed in time and was delayed for about 21 months as no order was delivered.*
- 6. That as and when AR verified the status of appeal, it was found that the Order was already passed and, therefore, the same was downloaded from the portal and the appeal was filed.*
- 7. That the delay is for reasonable course and would cause great hardship to a small person.*
- 8. That the above said facts are true and correct and for that this affidavit is executed.*

3. Learned Counsel contended that due to change of address, the assessee could not receive the notice for hearing from Ld. CIT(A) and also could not receive order of Ld. CIT(A) on time. Ld. Counsel also contended that another reason of delay of delay was due to COVID-19 Pandemic. Due to COVID-19 Pandemic, the assessee could not contact with his Counsel and there was a communication gap also, therefore the appeal could not file on time. Therefore, Learned Counsel submitted that reason cited above for delay in filing the appeal are convincing and therefore delay should be condoned and appeal may be admitted for hearing on merit.

4. On the other hand, Learned Senior Departmental Representative (Id.Sr DR) for the Revenue submitted that such huge delay should not be condoned merely because of the reasons that there was COVID-19 Pandemic. Other reasons cited by assessee is merely an excuse, therefore delay should not be condoned.

5. We have heard both the parties on this preliminary issue. 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.”

6. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice, we note that due to COVID-19 Pandemic the assessee could not file the appeal on time. The reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing these appeals. We, therefore, condone the delay in both the appeals and admit both the appeals for hearing.

7. Learned Counsel contended that during the appellate proceedings, neither the assessee nor his legal representative got the notice of hearing and therefore Ld. CIT(A) has passed an *ex parte* order without adjudicating various issues on merit, hence Learned Counsel contended that an another opportunity to contest the appeal before the ld. CIT(A), may be granted to the assessee.

8. However, Ld. Sr.DR opposed the plea taken by Ld. Counsel of the assessee.

9. 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 ld. 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 ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to

adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 07/03/2022 by placing result on notice board.

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

सुरत/Surat/ दिनांक/ Date: 07/03/2022
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