

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"C" BENCH, AHMEDABAD**

**BEFORE MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**Ms.MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./**ITA.No.1859/Ahd/2018**

**निर्धारण वर्ष/Asstt. Year: 2014-15**

M/s.B. Nanji A PAN : AAKFB 3025 G C/o. Mehta Lodha & Co. Chartered Accountants 105, Sakar-I, Nr. Gandhigram Railway Station, Off Ashram Road Ahmedabad 380 009.	Vs.	ITO, Ward-3(3)(12) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri P.D. Shah, CA
Revenue by :	Shri Mukesh Kumar Sharma, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **05/04/2022**

घोषणा की तारीख /**Date of Pronouncement**: **20/04/2022**

**आदेश/O R D E R**

**PER MADHUMITA ROY, JUDICIAL MEMBER:**

Instant appeal filed by the assessee is directed against the order dated 9.3.2018 passed by the Id.CIT(A)-3, Ahmedabad arising out of order passed by the ITO, Ward-3(3)(12), Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the Asst.Year 2014-15.

2. At the time of hearing, it is noticed that the Registry pointed out appeal filed by the assessee before the Tribunal is time barred by 104 days. It is seen from the record that no application for condonation of delay has been filed,

though it has been pleaded by the assessee that there is inadvertent delay on the part of the assessee in filing appeal before the Tribunal. However, no affidavit duly affirmed by the parties has been filed before us in support of condonation of delay. On the other hand, the ld.counsel for the assessee submitted that in earlier year when the assessee preferred appeal before the Tribunal being ITA No.1858/Ahd/2018 for the Asstt.Year 2012-13, a delay of 124 days was occurred in filing the appeal wherein an affidavit sworn by the party has been submitted before the Tribunal. It was further argued by the ld.AR that while condoning the delay of 124 days such affidavit filed by the assessee was duly considered by the Co-ordinate Bench which is reflected at para No.6 of the order dated 13.5.2021 passed in the above appeal. A copy of the same has been filed before us. Upon perusal of the same, it appears that amongst other reasons, change of Chartered Accountant, financial crisis etc. resulted in such delay. These reasons have been again pleaded by the ld.AR in support of condonation of delay in the instant appeal. The ld.DR in all fairness did not object to the submissions of the ld.AR.

3. Having regard to the facts and circumstances of the case, and the reasons cited by the assessee, to meet ends of justice and fair play, we condone the delay in filing the appeal before the Tribunal, and proceed to decide the appeal.

4. A short fact sufficient for disposal of this appeal is this that the assessee is real estate developer. In the assessment under section 143(3) it was noticed by the AO that the assessee has accepted fresh deposits as unsecured loans from certain persons. The ld.AO has noted names of the depositors and the amount of deposits in page no.3 of the assessment order. The total receipt of deposits received by the assessee was to the tune of Rs.91,50,000/-. The assessee was asked to furnish relevant details to establish authenticity of the

transactions. Though the assessee has furnished some of the details, they were not sufficient enough to satisfy the Id.AO for finalizing assessment. Accordingly, he made addition of Rs.91,50,000/- under section 68 of the Act. Issue came up before the Id.CIT(A). Despite number of opportunities given to the assessee to defend its case there was no compliance, much less any appearance made before the Id.CIT(A). The details of non-compliance by the assessee is reflected in the order of the Id.CIT(A) at page No.2 of the impugned order. In other words, for the present assessment year the assessee was given as many as four opportunities, but all the time assessee remained non-complied. Therefore, the Id.CIT(A) was compelled to proceed with the matter ex parte. Considering the documents and submissions of the assessee available on record, the Id.CIT(A) confirmed the assessment order. Hence, the assessee is in further appeal before the Tribunal.

5. With the assistance of both the parties, we have gone through the orders of the Revenue authorities and also materials available on record. At the time of hearing of the matter, Id.counsel for the assessee drew our attention to the particular fact that certain additional evidences have been filed before us, which were not filed before the lower authorities due to series of problems, mainly on account of financial hardship, the absence of accountant of firm due to death of his mother, dispute with the lenders and change of chartered accountant etc. Before us a prayer has also been made to admit additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963. Those documents have already been furnished before us by way of paper book, copy whereof has been placed on record. It is further submitted that these documents are necessary to make out the case of the assessee and go to the root of the issue. Thus, the same required to be considered by the Revenue while adjudicating the issue on merit itself. These documents are mostly confirmations, bank statement of the parties from whom loan was

taken and repaid subsequently. He, therefore, prayed for remanding the issue back to the file of the Id.AO to consider the same afresh upon considering additional evidence so adduced by the assessee before the Tribunal. The Id.DR however has not made any serious objection in this regard.

6. Having heard the parties and having regard to the facts and circumstances of the case, we are of the opinion that in order to render complete justice, a fair opportunity of hearing should be given to the assessee by allowing him to adduce additional evidence as stated hereinabove. We, therefore, admit additional evidences and dispose of the appeal by setting aside the issue to the file of the Id.AO with a further direction upon him to dispose of the matter by giving further opportunity of hearing to the assessee for justifying the case made out by the assessee upon considering the additional evidence adduced before us or any other evidence, which the assessee may choose to file at the time of hearing of the matter. Accordingly, this appeal shall be treated as allowed for statistical purpose.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the Court on 20<sup>th</sup> April, 2022 at Ahmedabad.**

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

Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

**TRUE COPY**

Ahmedabad; Dated 20/04/2022

**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 / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

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