

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

ITA No. 111/SRT/2021 (AY: 2011-12)

Kavita Kalpesh Doshi, 504, Avni Apt., Parshav Nagar Complex, Sagrampura, Surat-395002 (Gujarat). PAN No. AGYPD 6421 G	Vs.	I.T.O., Ward-1(2)(2), Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Yogesh Shah, AR
Respondent represented by	Shri J.K. Chandnani, Sr.DR
Date of hearing	20/05/2022
Date of pronouncement	20/05/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-II, Surat (in short, the Id. CIT(A) dated 20/11/2015 for the Assessment year 2011-12. The assessee has raised following grounds of appeal:

“(1) That the learned Commissioner of Income- tax (Appeals) has erred both in law and in facts in upholding the validity of the asstt.order where the said asstt.order has been passed in wrong status (the assmnt.order has been passed in the status of firm whereas the correct status is Individual) and also for wrong accounting year (the order has been passed for the a/c.yr. 1/4/2011 to 31/3/12) whereas the correct a/c.yr. is 1/4/2010 to 31/3/2011).On the facts and in the circumstances of the case, such defective order deserves to be quashed for being void ab initio, not related to me.

(2) That the learned Commissioner of Income-tax (Appeals) has erred both in law and facts in upholding the validity of the assmnt. order by considering

the two errors(as mentioned in Ground No.1) in ITNS-65 as being curable U/S.292BB of the Act. In section 292BB the assessee is precluded from taking objection in any proceeding or inquiry under this Act that the notice was not served upon him or not served upon him in time etc. Section 292 BB, as per wording covers the errors in notice issued before passing asstt.order and not the errors contained in the assmnt.order itself. As these errors are committed in the asstt.order itself, the order passed in an illegal order deserves to be quashed.

- (3) That the learned Commissioner of Income- tax(Appeals) has erred in upholding the addition of Rs.7,00,000/- made to the returned income though the said addition has been made without issuing any prior show cause notice to the assessee. A quasi-judicial administrative decision rendered or an order made in violation of audi alterem partem rule is null and void and such order impugned in such a case to be struck down as invalid on that score alone.*
- (4) That the CBDT instruction for assumption of jurisdiction for selection for scrutiny and assmnt's are issued U/s.119 are binding on the Assessing Officer and have to be followed by him letter and spirit. As there was no confirmation of purchase of land by the sub-Registrar during the assmnt.proceedings, the A.O. has no further jurisdiction to frame the assmnt. On the facts and in the circumstances of the case, assmnt.order is passed without assuming jurisdiction which is an illegal order deserves to be quashed.*
- (5) The learned Commissioner of Income tax (Appeals) has erred in enhancing income to the extent of Rs.200000/- U/s. 251(1) r.w.s. 251(2) of the Act. On the facts and in the circumstances of the case, the said addition of enhancement of Rs.200000 be deleted on merits of the case.*
- (6) The learned Commissioner of Income-tax (Appeals) has erred in upholding of interest charged U/s.234-B, 234-C where it is unlawful to charge interest U/s.234-b where return is submitted U/S.44-AB.*
- (7) The learned Commissioner of Income-tax (Appeals) has erred in upholding the initiation penalty proceedings U/s. 271(1)(c) of the Act. On the facts and in the circumstances of the case the said action should be dropped.*

(8) The appellant may be permitted to raise new grounds of appeal and to modify .rectify or to withdraw grounds of appeal duly raised by him.”

2. Perusal of record reveals that the impugned order was passed by the Id. CIT(A) on 20/11/2015, however, the present appeal is filed on 01/07/2021. Thus, there is inordinate delay of 1945 days in filing the present appeal before the Tribunal. The assessee has filed her affidavit for condoning the delay in filing appeal before the Tribunal. In the affidavit, the applicant/assessee contended that the appeal is filed on 01/07/2021 and there is delay of 1945 days in filing the present appeal before the Tribunal. She stated in her affidavit that there was matrimonial dispute and cold line (matrimonial) dispute between her and her husband. And in fact she could not look after the taxation matter. It is further stated that she was suffering from thyroid problems since 2014 and was under constant treatment by Dr. Ajay Jain. Due to cold line relationship prevailed during the last 6 years with her husband, the assessee was in depression and could not concentrate on tax affairs due to communication gap created between the assessee and her husband. On the basis of aforesaid averment made in the affidavit, the Id. AR of the assessee submitted that the assessee is a native of Rajasthan and under local custom and tradition, no litigation or complaint was filed against her husband. The assessee has filed affidavit for condoning the delay which is supported by various medical prescriptions. The Ld. AR for the assessee prayed for condonation of delay and to admit the appeal for hearing on merit.
3. On the other hand, the learned senior departmental –representative (Id. Sr. DR) for the revenue has strongly objected the condonation of delay. The Id. Sr. DR for

revenue submits that the impugned order was passed in November, 2015, yet the appeal is filed in July, 2021. There is inordinate delay in filing the appeal. The assessee has not shown sufficient cause for condoning the delay. The assessee has not furnished any medical prescription or medical advice where the assessee was advised complete bed rest or was confined to bed. The Id. Sr. DR objected for condoning the delay. The Id. Sr. DR submits that the first prescription furnished by the assessee is of July, 2016 and there is no explanation about the first seven months period after passing the order by the Id. CIT(A).

4. We have considered the submissions of both the parties and perused the contents of affidavit, submissions of Id. representative of the parties and the medical prescription. We find that the first medical prescription relates to 15/07/2016 and in the clinical summary of medical reports, the Doctor prescribed following advice:

1. To continue all other medications except carbimazole/methimazole
2. To resume carbimazole/methimazole after 5 days, if already prescribed.
3. Observe strict iodine restriction for 5 days after therapy (avoidance of sea food, ointments and other iodine-containing substances as explained).
4. To consult your referring doctor after 2 to 3 weeks and to remain under their follow up as directed by him/her.
5. Kindly note: (a) you may become hypothyroid (thyroid stops functioning or functions less) or euthyroid (thyroid functions at normal level) a few weeks to months after radioiodine therapy, which are desired goals of the therapy. Thyroid function status may alter over time (b) in a small fraction of patients (-10%), the thyrotoxic (thyroid overfunction) symptoms may return, and radioiodine therapy may have to be repeated.
6. Radiation precautions to be followed by patient for 5 days.
 - (a) Maintain at least 1 m distance from pregnant ladies and children below 10 y.

- (b) Flush twice after using the toilet.
 - (c) Avoid conception for 6 months (applicable to spouse of male patients as well)
 - (d) Stop breast feeding (if applicable to the patient).
 - e) Frequent (4 to 5 times per day) gargles after chewing on sialogous (like lemon or sour candy) for 10 days.”
5. We have also perused all other medical prescription. On perusal of all medical prescriptions, we do not find any advice of Doctor about the complete bed rest or the assessee was confined to bed or was not in a position to sign the appeal paper. The other contention of Id. AR of the assessee was that there was matrimonial dispute between the assessee and her husband and due to traditional Rajasthani family, no complaint or matrimonial litigation was launched by her against her husband. The submission of assessee does not inspire any confidence as neither any documentary evidence nor any other corroborative evidence, exchange of letter or any other thing is placed on record. So far as the prescription of assessee is concerned, there is no advice of the Doctor for complete medical rest.
6. We find that the assessee has placed on record the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs Mst. Katiji & Ors. (1987) 55 CCH 0151 (SCC) (SC). We find that the case ratio of the said decision is absolutely not applicable on the facts of the present case. In case of Mst. Katiji there was a delay of 4 days in filing appeal by State of Jammu & Kashmir. In the said case the Hon'ble court held that when technical consideration are pitted against the each other cause of substantial must prevail. However, in the present case, there is inordinate delay in filing the appeal. The assessee is well educated person and an income tax payee and was running her own business, thus, in our

view that assessee has not sufficiently explained the delay in filing the appeal. Moreover, the assessee is not personally require to attend the hearing before Tribunal. No explanation about first seven month of delay is not explained. The approach in filing the application for condonation of delay is casual. Therefore, we do not find any justification for condoning the delay of 1945 days in filing the present appeal. The ratio of case law filed by the assessee is also not applicable of the facts of the present case as there is inordinate delay in filing the appeal. Accordingly, the delay of 1945 days in filing the present appeal is not condoned and consequently, the appeal of the assessee is not admitted and dismissed in limine. Order was dictated in the open court room in presence of the parties at the time of hearing of the appeal.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced on 20/05/2022, in open court.

Sd-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 20/05/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat