

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE
BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.72/PUN/2020

निर्धारण वर्ष / Assessment Year : 2010-11

Kunjbihari Jugalkishor Agrawal, 304/305, Dharam Palace, N-3, CIDCO, Aurangabad – 431 003 Maharashtra PAN : AGKPA1565E	Vs.	ACIT, Circle-2, Aurangabad
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Arvind Desai
Date of hearing	26-05-2022
Date of pronouncement	30-05-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for AY 2010-11 arises against the CIT(A)-2, Aurangabad's order dated 07-06-2016 passed in case No.ABD/CIT(A)-2/144/2013-14 involving proceedings under Section 143(3) of the Income Tax Act, 1961 in short the Act.

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex parte.

2. It emerges at the outset that the assessee's instant appeal suffers from 1262 days delay in filing. He has submitted an affidavit dated 17-01-2020 as follows :

"2. Against this Order, I had preferred an appeal before the Commissioner of Income Tax(Appeals)-Aurangabad. The CIT (Appeals), Aurangabad has passed its order dt. 07-06-2016 and was received by me on 15-06-2016.

3. That after receipt of order passed by the CIT(Appeals), Aurangabad, the Tax Consultant advised me to pay income tax demand raised by the Assessing Officer vide Assessment Order dated 13.03.2013 for A.Y. 2010-11, at the earliest and also not to file appeal against the order passed by the CIT (Appeals), Aurangabad, as he has accepted the additions and if appeal is filed the Assessing Officer may take further adverse actions such as survey, levy of Penalty on additions made etc. against me and this will damage my financial position. Thus, the Tax Consultant advised that it will not be in my interest to file an appeal against the Appellate Order dated 07.06.2016 for A.Y. 2010-11.

4. That as the Tax Consultant was looking and attending all tax matters specially Income Tax matters and he being an expert in the field of taxation, I was seeking his advise on Income Tax matters from time to time. By relying on the advise given by the Tax Consultant, I did not file the appeal before the ITAT against the Appellate Order dated 07.06.2016 for A.Y. 2010-11.

5. That when I consulted another Chartered Accountant for second opinion. He advised that the additions made was not justified in the eyes of the Law and was unjust while assessing income. Thus, he advised me to file appeal before the ITAT against the Appellate Order dated 07.06,2016.

6. That delay in filing of appeal against Assessment Order dated 07.06.2016 for A.Y. 2010-11 before the ITAT is not intentional or due to the negligence on my part. I have not deliberately delayed in filing the appeal against the said Assessment Order. I have relied on the advice of expert in the field, hence the appeal was not filed but when I consulted to another CA and realized that the Assessing Officer while assessing the income for A.Y. 2010-11 has done injustice, I immediately filed appeal before the Hon'ble ITAT, Pune.

7. In view of these facts, there is a delay of almost 1262 days in filing the appeal.

I hereby confirm that the delay is attributable to the above mentioned circumstances and therefore in the interest of natural justice, I request your honors to condone the delay caused in filing the appeal and oblige.”

3. I have given my thoughtful consideration to assessee's foregoing condonation averments and find no merit therein. There would be hardly any dispute that hon'ble apex court's landmark decision in Collector Land Acquisition Vs. Mst. Katijoi & Ors. (1987) 167 ITR 471 (SC) held long back that all technical aspects must make a way for the cause of substantial justice. Their lordships latter adjudication in University of Delhi Vs. Union of India & others in Civil Appeal No. 9488-9489/2019 dated 17-12-2019 however added caveat therein that a reasonable and acceptable explanation is very much necessary to be claimed at the concerned assessee's behest for having not instituted the corresponding proceedings. I adopt the very reasoning herein as well and find that the assessee has not been able to submit any cogent reason so as to prove that the impugned delay of 1262 days is neither intentional nor deliberate. The foregoing condonation petition itself stands rejected therefore.

All other pleadings on merits are rendered academic.

4. This assessee's appeal is dismissed in above terms.

Order pronounced in the Open Court on 30th May, 2022.

Sd/-

**(S.S.GODARA)
JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 30th May, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Aurangabad
4. The Pr.CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
/ DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	26-05-2022	Sr.PS
2.	Draft placed before author	30-05-2022	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		