

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.307 & 308/M/2021
Assessment Years: 2009-10 & 2010-11
And
ITA Nos.306 & 309/M/2021
Assessment Years: 2009-10 & 2010-11**

Shri Mukesh S. Jhangiani, HUF 602, Drona Building, Vishal Nagar, Marve Road, Malad (W), Mumbai – 400 064 PAN: AAKHM4791E	Vs.	Income Tax Officer, Ward – 24(2)(4), Room No.605, C-13, 6 th Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Dinkle Hariya, A.R.
Revenue by : Shri Kanhiya Lal Kanak, D.R.

Date of Hearing : 17 . 05 . 2022

Date of Pronouncement : 21 . 06 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid appeals bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant Shri Mukesh S. Jhangiani, HUF (hereinafter referred to as 'the assessee') by filing present appeals sought to set aside the impugned orders dated 27.01.2017 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)] on identically worded grounds inter alia that:

"1. Natural Justice

1.1 The Learned Commissioner of Income - tax (Appeals) - 41, Mumbai ["Ld. CIT (A)"] erred in dismissing the appeal of the Appellant ex- parte.

1.2 While doing so, the Ld. CIT (A) erred in:

- (i) Not giving fair, reasonable and proper opportunity of being heard to the Appellant; and***
- (ii) Not appreciating that the Appellant was prevented by reasons beyond its control for not being able to attend on the date of hearing.***

1.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

WITHOUT PREJUDICE TO THE ABOVE

2,1 It is submitted that in the facts and the circumstances of the case, and in law, no best judgment assessment u/s. 144 was called for.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs.5,12,208/-, on the ground of being alleged unexplained investment in shares.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for

3.4 Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law."

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : on the basis of search and seizure operation conducted under section 132(1) of the Income Tax Act, 1961 (for short 'the Act) in case of M/s. Mahasagar Securities Pvt.

Ltd. (now known as M/s. Alag Securities Pvt. Ltd. On 25.11.2009 it has come on record that Shri Mukesh M. Chokshi, a Chartered Accountant by profession operating from Block-H, Shree Sadashiv CHS, Santa Cruz East, Mumbai, from which no genuine business is being carried out has provided accommodation entries from M/s. Mahasagar Securities Pvt. Ltd. and its related group companies. On the basis of search and seizure operation conducted in the Mahasagar group of cases. Assessee's assessment was also reopened as the assessee had obtained accommodation entries for an amount of Rs.5,12,208/- and Rs.26,99,265/- in A.Y. 2009-10 & 2010-11 respectively. On failure of the assessee to put in his appearance to explain the aforesaid accommodation entries addition of Rs.5,12,208/- and Rs.26,99,265/- for A.Y. 2009-10 & 2010-11 respectively has been made and thereby made assessment under section 144 read with section 147 of the Act for A.Y. 2009-10 & 2010-11 respectively.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeals. On failure of the assessee to appear and argue his appeal the Ld. CIT(A) dismissed the same ex-parte. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeals.

5. Aforesaid appeals filed on 12.04.2017 are reported to be time barred by the registry. The assessee by filing application supported with affidavit of assessee being managing director of the company sought to condone the delay of 1434 days in filing the appeal on the grounds inter alia that the assessee was into the business of manufacturing, supply and installation of telecom towers on PAN

India basis and Bharat Sanchar Nigam Ltd. (BSNL) was its only client; that during A.Y. 2011-12 due to emergence of private telecom services providers into market BSNL had suffered huge losses resulting into sudden stopping of their capital expenditure including shutting down of their own manufacturing facilities; that due to aforesaid position of BSNL the assessee company had to stop its business and shut down its activities and consequently sold its exiting inventories in distress sale in scrap to partly settle various dues of the workers; that assessee company had to borrow huge loan from Federal Bank Ltd. and due to non payment of interest, term loans, installment and non honouring of letter of credit, bank guarantees, the bank account of the assessee company was classified as Non Performing Asset (NPA) which lead to numerous litigations against the assessee company in the Debts Recovery Tribunal (DRT), Mumbai; that multifarious litigation against the assessee made him running from pillar to post; that assessee has also been facing numerous litigations launched by VAT/Sales Tax Authorities for which he had been travelling from Mumbai to Kerala, Nasik and other Sales Tax offices from 2016 to 2019 to obtain copy of C forms from various circles of BSNL to settle VAT/GST dues; that DRT vide order dated 29.06.2016 ordered to attach assessee's office and residence against which assessee has filed writ petition before the Hon'ble Bombay High Court; that office of assessee situated at Malad has been sealed by the tax authority on 02.07.2016; that in order to settle its account assessee company has sold its property and repaid all the amounts due to the bank, workers, suppliers, vendors of different parts of the country; that due to multifarious litigations, extensive travel and mental stress assessee diagnosed with sever allergy and symptoms

of Asthama in 2019 diagnosed by Dr. Kochar of Nanavati Hospital, Mumbai; that only in the first week of March 2021 assessee came to know that the Ld. CIT(A) has passed order, which remained lying in his drawer and then contacted his chartered accountant to file present appeals.

6. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that when the assessee has himself filed the appeal before the Ld. CIT(A) all the reasons narrated in the affidavit are afterthought and prayed for dismissal of the application.

7. Keeping in view the facts duly narrated in the affidavit inter alia that the business of the assessee got closed due to poor health of BSNL who has also suffered huge losses due to entry of the private player in telecom sector and consequently BSNL has stopped their capital expenditure totally; that assessee being one of the major supplier to BSNL suffered huge losses, faced multifarious litigations by the bank in DRT, with VAT and Sales Tax Authorities which certainly caused huge mental stress to the assessee; that during the period under consideration assessee's father also hospitalized for various ailments including prostate cancer, Tuberculosis of spine, hip fracture etc. and all these facts to our mind are sufficient cause not to file the appeal in time and condone the delay.

8. Hon'ble Supreme Court while deciding the issue of condonation of delay in case of Land Acquisition Collector vs. MST Katiji & Others (SC) held that "when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot

claim to have a vested right in injustice being done because of a non deliberate delay”. So the principle laid down by the Hon’ble Supreme Court is applicable to the reasons of delay in not filing appeal within limitations being beyond the control of the assessee and as such are sufficient to condone the delay.

9. Even by applying the principle of natural justice assessee is required to be provided with an opportunity of being heard which has not been granted by the lower revenue authority. So application for condonation of delay is hereby allowed and aforesaid appeals are ordered to be registered.

10. We have heard the Ld. Authorised Representatives of the parties to the appeals who have fairly conceded that the appeals of the assessee have never been disposed of by the AO as well as the Ld. CIT(A) on merit rather in the absence of assessee due to his failure to appear before the Ld. CIT(A). To substantiate the cause of justice and to decide the issue once for all in order to stop the multiplicity of the proceedings impugned order passed by the Ld. CIT(A) is liable to be set aside. Hence, appeals filed by the assessee are allowed for statistical purposes to be decided afresh by Ld. CIT(A) after providing adequate opportunity of being heard to the assessee.

11. Consequently, all the four appeals filed by the assessee are allowed.

Order pronounced in the open court on 21.06.2022.

Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER
Mumbai, Dated: 21.06.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.