

**आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**“C” BENCH, AHMEDABAD**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**  
**AND**  
**MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos.1498& 1499/AHD/2019**  
**Assessment Year:2010-11**

JagrutiSanjaykumarSoni, 26-283, Pujan Apartment, B/h Jivraj Mehta Hospital, Vasna, Ahmedabad-380007. <b>PAN :BFIPS 8874 J</b>	Vs	The ITO, Ward-5(2)(1), Aaykar Bhavan, Nr/ Sachin Tower, Prahladnagar Road, Vejalpur,Ahmedabad-380015
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri K. C. Thakkar, Advocate
Revenue by :	Shri V. K. Singh, Sr.DR

सुनवाईकीतारीख/**Date of Hearing** : **22/04/2022**  
घोषणाकीतारीख/**Date of Pronouncement**: **29/06/2022**

**आदेश/O R D E R**

**PER BENCH**

Captioned two appeals filed by the assessee, pertaining to Assessment Year (AY) 2010-11, is directed against the separate order passed by the Learned Commissioner of Income Tax (Appeals)-5, Ahmedabad [in short “Ld.CIT(A)”]in Appeal No. CIT(A)-5/ITO.WD.5(2)(1)/10127-10128/2018-19both dated 19.07.2019, which in turn arise out of assessment order and penalty order, passed by the Assessing Officer under section 144 r.w.s. 147and under section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”].

2. At the outset, Shri K. C. Thakkar, Learned Counsel for the assessee begins by pointing out that Ld. CIT(A) has not condoned the delay in filling these appeals despite of having sufficient reasons to condone the delay. He stated that in ITA No.1498/AHD/2019, there was delay for 216 days and in ITA No.1499/AHD/2019 there was delay for 25 days. The Learned Counsel contended that assessee had filed

the petition for condonation of delay during the appellate proceedings and explained the 'sufficient cause' to condone the delay, despite of this, Id CIT(A) did not condone the delay. The Id Counsel, therefore prays the Bench that delay in filing the appeal before Id CIT(A) may be condoned in both the appeals and both the appeals may be remitted back to the file of the Assessing Officer for afresh adjudication.

3. On the other hand, Learned Senior Departmental Representative (Id. Sr-DR) for the Revenue strongly opposed the prayer of the Ld. Counsel, for condonation of delay in these appeals and he stated that delay should not be condoned and both these appeals should be dismissed.

4. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that in ITA No. 1498/AHD/2019 for AY.2010-11, there is delay of two hundred sixteen days (216) days in filling appeal before the Id. CIT(A). In ITA No.1499/AHD/2019 for AY.2010-11, there is delay of twenty five (25) days in filling the appeal before the Id. CIT(A). We note that before the Id. CIT(A), the assessee has submitted a petition for condonation of delay for both the appeals. The contents of one of the petitions are reproduced below:

*"1. That I was entrusted with the work of preparing accounts of Smt. JagrutiSanjaykumarSoni for the financial year 2009-10.*

*2. That Shri Sanjay Kumar Soni had handed over to me details regarding the intra-day share transactions done in the name of Smt. JagrutiSanjaykumarSoni in the F.Y.2009-10 with the relevant bank statement.*

*3. That the accounts prepared were not required to be used at the relevant time as it did not reflect income exceeding the maximum income not chargeable to tax.*

*4. That after more than 7 years shri SanjaykumrSoni contracted me and asked for the accounts prepared by me.*

*5. That during this time I had to change my computer as the previous one had gone out of order. Also the accounting programme had also changed and update versions two three*

*time. As a result, despite efforts it was not possible for me to provide the accounting details to Shri Soni.*

*6. That I informed him that it is not possible to retrieve the accounts as I am not sure if it has got deleted or got corrupt. I told him it could be prepared once again if the relevant data in made available to me.*

*7. That Shri Soni informed me that he was unable to trace the relevant basic data like bank statement, broker statements etc. required for preparing the accounts due to long lapse of time and that the banks/brokers were also taking time in finding the required statements from their old record.*

*8. That Shri Soni was informed that it was not possible to prepare the accounts without the authentic basic accounts without the authentic basic accounting details. However, he was informed that the date provided by the Income tax Department show that the transactions were day transaction resulting in small account of loss.*

*9. That ultimately data required for preparing accounts have been made available in the course of this month, March 2019, based on which the accounts are now prepared.*

*10. That I have made these statement through this affidavit to place on record the correct facts as Shri Soni informed me that explanation regarding the circumstances causing delay in filling of two appeals in the case of Smt. JagrutiSanjaykumarSoni required to support her request for condoning delay in filling the appeals.”*

5. Based on the reasons stated in the aforesaid affidavits, the Ld. Counsel contended that Ld. CIT(A) ought to have condoned the delay in both the appeals.

6. We have heard both the parties on this preliminary issue. We have gone through both the petitions. 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.”*

7. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. The reasons given in both the affidavits 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 direct the Id CIT(A) to admit both these appeals for hearing on merit.

8. On merits, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the Id. CIT(A). The Id CIT(A) did not adjudicate these appeals on merits. 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 for the Id. CIT(A) and remit both the appeals back to the file of the Id. CT(A) to adjudicate the various issues involved in these appeals, afresh on merits. For statistical purposes, both the appeals of the assessee are treated as allowed.

9. In the result, both the appeals of the assessee are allowed for statistical purposes. A copy of the instant common order be placed in the respective case file(s)

**Order pronounced in the open court on 29<sup>th</sup> June, 2022.**

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

Sd/-  
**(Dr. A. L. SAINI)**  
**ACCOUNTNAT MEMBER**

Ahmedabad, dated 29/06/2022  
SAMANTA/TANMAY

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad**