

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM
आयकरअपीलसं./ITA No.179/SRT/2021

(निर्धारणवर्ष / Assessment Years: (2014-15)
(Virtual Court Hearing)

M/s. Chintan Enterprise, 601, Sapphire Court, VIP Road, Vesu, Surat-395007. E-mail: aaifc2176r@dilipparesh.com	Vs.	The ITO, Ward-3(2)(2), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAIFC2176R		
(Assessee)		(Respondent)

Assessee by: Shri Dilip Thesiya, CA

Revenue by: Shri J. K. Chandnani, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 11/05/2022

घोषणाकीतारीख/Date of Pronouncement: 28/06/2022

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3 [in short 'ld. CIT(A)'], Surat in Appeal No. CIT(A) Surat-3/10034/2017-18 dated 29.05.2019, which in turn arises out of an order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. At the outset, Ld. Counsel stated, that appeal filed by assessee is barred by limitation by 821 days. The Ld. Counsel filed petition for condonation of delay. We note that Ld. CIT(A) has passed order on 29.05.2019, however assessee claimed that he has received the order of the ld. CIT(A) in September, 2021, therefore Ld. Counsel contended that delay should be counted from September, 2021 onwards. The assessee filed the appeal before the Tribunal on 15.10.2021, therefore from the assessee's point of view there is no delay in filing the appeal.

3. We note that ld. CIT(A) has passed his order on 29.05.2019, therefore, the assessee should have filed the appeal before the Income Tax Appellate Tribunal without two months, that is up to 29.07.2019. That is appeal is to be filed within two months from the date of communication of order to the assessee. We do not know the exact date on which the assessee has received the order of ld. CIT(A) as the assessee contended in the affidavit that he has received the order of ld. CIT(A) in September, 2021. However, the assessee has not proved with supporting evidence, therefore we do not accept assessee's version that assessee has received the order of ld. CIT(A) on 29.05.2021. Therefore, accordingly to us delay starts from 29.07.2019 to the date of filing of the appeal before the Income Tax Appellate Tribunal, that is on 15.10.2021. Therefore, the delay in filing the appeal is started on 29.07.2019 and ends on 15.10.2021. Hence, there is delay of filing the appeal for eight hundred twenty one (821) days. The assessee has submitted before us, the affidavit requesting the Bench to condone the delay which is reproduced below:

- “1) The assessee begs to prefer this application for condonation of delay in relation of Appeal filed against the order of the Commissioner of Income Tax (Appeals).*
- 2) The appeal filed on 9.01.2017. The order of CIT(A) was passed on 29.05.2019 on ex-parte basis. In total Four opportunities were given by H'ble CIT(A) all of it were through email only, even the CIT(A) order was sent through email id only. The said facts are already part of CIT(A) order at para -4 of its.*
- 3) The email communication were sent by CIT(A), on email id as provided by appellant in ITR of AY 2014-15 as it.dilippareash@gmail.com. However, the appellant had changed the registered email id to new one at aaifc217r@dilipareash.com since 2017, and were updated in all the ITRs from AY 2017-18 onwards, i.e. before issue of communication by CIT(A). But all communication were sent on old email id and even order is also passed on ex-parte. Hence appellant missed all communications.*
- 4) Furthermore, even otherwise in Form-35 of CIT-Appeal, it is being specifically asked inform itself that “whether Notices/Communication may be sent on email?”, and was replied as NO by appellant, then also hearing notices were sent on email and not otherwise.*
- 5) In September, 2021, upon coming to knowledge of new version in e-filing and e-proceeding portal, appellant, accessed it, and come to know that his order for CIT(A) has already been passed on 29.05.2019.*
- 6) Under this circumstance, appellant missed the opportunity so granted by CIT(A) and been punished.*
- 7) So far as facts of case is concerned, the ld. AO has passed assessment order, with addition to total income of Rs.30,18,072/-, for difference in receipts as per 26AS (TDS Form), and P& L Account treating it simply as suppression and as appellant's income; ignoring the very facts and reconciliation has submitted to AO.*

7) *Accordingly, the appellant submits that the case is a meritorious and requires consideration. If the delay is not condoned, it would cause irreparable loss to the applicant.*”

4. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue submitted that the delay should not be condoned.

5. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. In Form No. 35, Assessee has opted that notices should not be sent to him through e-mail, but through physical delivery. Despite of this, the Department sent notices on old e-mail id of the assessee. This is the reason, the assessee could not receive notices for hearing, hence delay of 821 days has occurred. This is the mistake on the part of Department, therefore, Ld. Counsel contended that delay should be condoned.

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.”

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 the affidavit 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.

6. On merit, Ld. Counsel contended that during the appellate proceedings, the assessee did not receive the notice of hearing from Ld. CIT(A), therefore, he could not attend the hearing of the ld. CIT(A). The Ld. Counsel also submitted that ld. CIT(A) did not pass the order on merit. The Ld. Counsel also submitted that assessee has submitted grounds of appeal and statement of facts, however the ld. CIT(A) did not

consider the statement of facts while adjudicating the assessee's appeal. Therefore, Ld. Counsel contended that in the interest of justice one more opportunity should be given to the assessee to plead his case before the ld. CIT(A).

7. The Ld. DR for the Revenue did not have any objection if the matter is remitted back to the file of the ld. CIT(A) for fresh adjudication.

8. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the ld. CIT(A). 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 of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced on 28/06/2022 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat / दिनांक/ Date: 28/06/2022

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat

