

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.153/Ahd/2021
Assessment Year: 2010-11**

Bajrang Kishan Vikas Seva Mandal vs. The Income Tax Officer,
AT – Sarla, Tal- Muli, Ward – 2 (Exemption),
Surendranagar – 363 510. Ahmedabad.
(Gujarat)
[PAN – AABTB 4210 G] (Respondent)
(Appellant)

Appellant by : Shri Mohit Palavi, AR
Respondent by : Ms. Sudhiksha Rani, Sr. DR

Date of hearing : 07.07.2022
Date of pronouncement : 22.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 30.03.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal:

- “1 *The learned Commissioner of Income Tax (Appeals) NFAC has erred in law and on facts of the case failed to appreciate the facts of the case that total income of the assessee being much below taxable limit and assessee being agriculturist and alliterate having no knowledge of tax law could not furnish the appeal in statutory time which is sufficient cause for the delay and therefore learned CIT(Appeal) ought to have condoned the delay in filing the appeal more particularly considering natural justice.*
2. *The Id. Commissioner of Income Tax (Appeals) NFAC has also failed to grant opportunity of being hearing to the appellant to which assessee is legally entitled so as to enable the appellant to explain the case and in that case unnecessary litigation could have been avoided.*

3. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s. 234A/B/C/D of the Act.*
4. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s 271(1)(c) of the Act.”*

3. The assessee is a Trust and has not filed its return of income for the A.Y. 2010-11. The Assessing Officer observed that the assessee Trust has done cash transaction of Rs.1,00,000/- or more in the relevant A.Y. and the same has escaped assessment. The Assessing Officer made addition of Rs.81,949/- in respect of indirect expenses, addition of Rs.64,88,521/- on purchases, addition of Rs.5,00,000/- in respect of unaccounted cash deposit and thus assessed total income at Rs.61,19,681/-. The assessment order was passed under Section 144 read with Section 147 of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal on the ground that there is a delay in filing the appeal and therefore, dismissed the appeal.

5. Ld. AR submitted that the appeal of the assessee was dismissed on account of delay in filing the appeal before the CIT(A) as the assessee could not give proper reasons for filing the appeal belatedly. The Ld. AR further submitted that no opportunity was granted to the assessee and the appeal was not decided on merit by the CIT(A). The intimation related to delay was not given to the assessee and the appeal was said to be pending even if delay has occurred in filing the same. Thus, in accordance with provisions of Section 250(1) of the Act, the CIT(A) was bound to grant opportunity to the assessee before dismissing the matter *in limine*. The Ld. AR relied upon the decision of the Tribunal in case of Neelam Hospital in ITA No.309/Chd/2021. Ld. AR also relied upon the decision of Hon'ble Gujarat High Court in case of Tushar Agro Chemicals vs. PCIT, R-Special Civil Appeal no.6232 of 2021, order dated 31.07.2021.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. Prima facie it appears that no opportunity of hearing was given to the assessee for explaining the delay of 496 days in filing the appeal before the CIT(A). Therefore, it will be appropriate to remand back the matter/issue contested herein to the file of the CIT(A) for adjudicating the issue of delay after giving hearing to the assessee. Needless to say that the assessee be given opportunity of hearing by following principles of natural justice. If the delay is explained properly by the assessee, the CIT(A) should decide the appeal on merit.

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

Order pronounced in the open Court on this 22nd day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 22nd day of July, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad