

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
 AND
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA Nos.33, 34 & 35/PUN/2021
निर्धारण वर्ष / Assessment Years : 2009-10, 2010-11 & 2011-12

Shri Vipul Kasturchand Jain,
 101, 1st Floor, A Wing,
 M.D. Complex, 8,
 Khetwadi Back Road,
 Mumbai – 400004

PAN : ADYPJ6790M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
 Ward – 1(3), Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
 Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 30-08-2022
 घोषणा की तारीख / Date of Pronouncement : 02-09-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These three appeals by the assessee against the order dated 16-01-2017 passed by the Commissioner of Income Tax (Appeals)-1, Nashik [‘CIT(A)'] for assessment years 2009-10, 2010-11 and 2011-12, respectively.

2. We find all the three appeals were filed with a delay of 1426 days. To condone the said delay, the assessee filed notarized affidavit dated 29-08-2022 explaining the reasons for the said delay. The ld. AR referred to para

No. 3 of the said notarized affidavit and submits that the assessee could not file the appeals in time due to dire need of funds including appeal memo fee as well as professional fee. Further, he drew our attention to chronological events chart and submits the wife of assessee was diagnosed with brain clot which resulted into coma and paralysis, even till today the assessee incurring medical expenses of around Rs.20,000/- per month towards medical treatment of his wife. His business also closed down due to operational losses. He argued that due to disclosure of his business and huge expenses towards treatment of his wife, the assessee was engaged in petty jobs in Raipur, Nashik etc. to sustain living. He submits that he has no intention to file the appeals with delay and it was due to weak financial position and health of his wife. Upon hearing both the parties and on perusal of notarized affidavit along with chronological chart, we note that the assessee was out of from his regular address in Mumbai and due to which no notices were served on him. It is noted from the record the mother of assessee is an illiterate and did not intimate the fact of any notices that might have issued by the Income Tax authorities. The assessee explained in detail the reasons for delay in filing of appeals particularly at para No. 3 of his notarized affidavit which is reproduced here-in-below for ready reference :

“3. It is hereby stated that thereafter, in spite of being in a very weak financial position, I paid taxes of around Rs.1 lakh during the months of October and November, 2019 against the outstanding income tax dues raised vide asst. orders u/s. 147 r.w.s. 143(3) passed for A.Y. 2009-10 to 2011-12. I hereby state that subsequently, with the intention of filing appeals against the appellate order passed by CIT(A) before Hon’ble ITAT, I approached my regular C.A. Mr. Harshraj Sanghavi at Mumbai who was looking after my case during the asst. proceedings for A.y. 2009-10 to 2011-12. However, at that time, the CA informed that I would be required to pay Rs.30,000/- towards ITAT appeal fee challans and further amount towards pending professional fees along with additional fees towards ITAT appeal filing. I wish to state that during the relevant time, my financial position was very weak since I was not engaged in any stable income earning activity/business and the said weak position was further worsened by the payment of tax dues of around of Rs.1 lakh made during the relevant period. It may also be stated that even till date, my wife is suffering from the medical condition related to paralysis caused by brain clot and hence, I have

to incur substantial medical expenses of around Rs.15,000/- to Rs.20,000/- for upkeep of my wife.”

3. On perusal of the above, which clearly discloses that he was in deficit of funds to pay required appeal memo fee as well professional fee to the authorized representative. It is also coming out from the said paragraph that the assessee approached his regular C.A. but however the appeal could not be filed in time only for the reason due to lack of funds. It is also explained that he is incurring the medical treatment expenses to his wife at around Rs.15,000/- to Rs.20,000/- per month. Therefore, under such circumstances, we deem it proper to condone the delay taking into consideration the explanation offered by the assessee in his notarized affidavit, in our opinion, the reasons explained by the ld. AR are bonafide which really prevented the assessee to file the appeals in time. Therefore, the delay of 1426 days is condoned in all the appeals.

4. On merits, the ld. AR submits due to reasons stated in the notarized affidavit the assessee could not appear before the CIT(A) due to non-services of notices. He submits that the assessee has a fair chance in succeeding on the issues raised before the CIT(A). On perusal of the record, we note that the appeal was filed with a delay of 4 days before the CIT(A) and for non-filing of delay condonation affidavit, the CIT(A) dismissed the appeal in limine without going into the merits. It is also noted that the CIT(A) has given three opportunities but no appearance was made before the First Appellate Authority. The ld. AR also undertaken before us that the assessee is ready to prosecute the grounds raised before the CIT(A) if this Tribunal affords an opportunity to the assessee by remanding the matter to the file of CIT(A) for its fresh consideration.

Therefore, taking into facts and circumstances of the case, submissions of ld. AR and ld. DR and in the interest of justice, we deem it proper to remand the matter to the file of CIT(A) with a direction to condone the delay of 4 days and adjudicate the issues afresh. The assessee is liberty to file evidence, if any, in support of his claim. Thus, the grounds raised by the assessee in all the three appeals are allowed for statistical purpose.

5. In the result, all the three appeals of assessee are allowed for statistical purpose.

Order pronounced in the open court on 02nd September, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 02nd September, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nashik.
4. The Pr. CIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune