

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.2551/M/2018
Assessment Year: 2009-10**

Shri Sanjay R. Tarukhia, 403, Mohini Grace Wadar CHS Ltd., Veera Desai Road, Andheri (West), Mumbai – 400 053 PAN: AABPT3280C	Vs.	Income Tax Officer 19(3)(4), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mukesh Choksi, A.R.
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 15 . 09 . 2022

Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Sanjay R. Tarukhia (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 15.02.2013 passed by Commissioner of Income Tax (Appeals)-30, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2009-10 on the grounds inter alia that :-

“1. The learned AO erred in law and in facts by adding an amount of Rs.16,87,700/- being cash deposits and an amount of Rs.18,58,340/- being cheque deposits in the Appellants bank account treating them as income.

2. The Appellants respectfully submit that the learned AO grossly erred in law and in facts disregarding the submission made by the Appellant that the total deposits represents amount received from various customers against sale of used cars and spares. It is a business of the assessee.

3. The learned AO erred in law and in facts the disallowance of Rs.35,46,040/- is purely arbitrary, without proper justification.

5. The learned AO erred in law and in facts in adding an amount of Rs. 1,90,000/- on account of other Income as per 26AS.

6. The learned AO erred in law and in facts in appreciating the facts that the amount is already included in the Gross Receipts of Rs.35,61,994/- shown in the profit and loss Account submitting during assessment proceeding.

7. The Appellant crave leaves to add, alter, and amend all or any of the grounds in appeal.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : Assessing Officer (AO) framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’) by making addition of Rs.34,66,384/- on account of cash and other deposits by treating the same as unexplained money of the assessee under section 69A of the Act primarily on the ground that assessee has not furnished the detail as required by way of notice issued under section 142(1) dated 14.10.2011 and was served upon the assessee on 18.10.2011. Though the assessee has filed part submissions but failed to file the complete documentary evidence in support of his claim.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to show that the Ld. CIT(A) has not dismissed the present appeal filed by the assessee on merits rather dismissed the same being time barred by not condoning the delay of 5 days. The assessee has filed an application for condonation of delay for the reason that the assessee was out of town. I am of the considered view that when assessee has come up with a specific reason by way of filing application dismissing the application for condonation of delay on hyper technical grounds was not the intention of the legislature in making the provisions for condonation of delay. Further, in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) the Hon'ble Supreme Court has held, "it is on contention of delay 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."

6. In view of the matter, I hereby condone the delay of 5 days in filing the appeal by the assessee before the Ld. CIT(A) and remit the case back to the Ld. CIT(A) to decide afresh on merits after providing opportunity of being heard to the assessee. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.09.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

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.