

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 241/Ahd/2021
(Assessment Year: 2010-11)

Ishwarsingh Ramchandra Jangid B-205 Mangal Maruti Residency, Nr. Om Shanti Nagar 2, Narol- Vatva Road, VAtva, Daskroi, Ahmedabad-382445	Vs.	The Income Tax Officer, Ward-3(2)(7), 3 rd Floor, Aaykar Bhawan, Vejalpur, Ahmedabad- 380015
[PAN No.AGGPJ1665C]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Darshan Gandhi, Advocate
Respondent by :	Shri Atul Pandey, Sr. DR
Date of Hearing	13.10.2022
Date of Pronouncement	19.10.2022

ORDER

PER Ms. SUCHITRA KAMBLE - JM:

This appeal is filed by the assessee against the order dated 31.05.2019 passed by the Ld. CIT(Appeals)-11, Ahmedabad for A.Y. 2010-11.

2. The grounds of appeal raised by the assessee read as under:

“1. **Ground No. 1 – Condonation of Delay:** Your Appellant delayed in filing of an appeal occurred on account of non-receipt of Appellate Order of CIT(A)-11, Ahmedabad. Accordingly, the appellant prays to condone delay and substantial justice be granted.

2. **Ground No. 2 – Notice U/s. 148 is without Jurisdiction of AO:** The Ld. AO erred in issuing notice u/s. 148 of the IT Act by ITO Ward 1(2)(1), Vadodara, whereas, the assessment is made by ITO Ward 3(2)(7), Ahmedabad. Accordingly, the notice issued u/s. 148 is without jurisdiction. It is prayed that Assessment Order passed u/s. 144 rws 147 of the IT Act may be quashed / cancelled.

3. **Ground No. 3 – Cash Deposit in Bank:** The learned CIT(A) erred in confirming the addition of Rs. 24,79,430/- on account of mere cash deposit in bank account, on the basis of AIR information, whereas, such cash is deposited by

appellant's employer for payment of diesel and expenses to truck drivers. Therefore, it is prayed that the addition so made may kindly be deleted.

4. **Ground No. 4 – Peak Theory:** *The learned CIT(A) erred in confirming the addition of Rs. 24,79,430/- made on the basis of cash deposited in bank, on the basis of AIR information. The ld. CIT(A) has not applied peak theory, as there is deposit and withdrawal of cash from bank. Therefore, it is prayed that the addition so made may kindly be re-worked on peak theory.*

5. **Ground:** *The appellant reserves its right to submit further details in connection with additions / disallowances made by AO as fresh evidence at the time of hearing of Appeal.*

6. **Ground:** *Your appellant craves liberty to add, to alter, to modify, to amend or to withdraw / delete any of the grounds of appeal at any time, on or before the hearing of appeal.”*

3. There is a delay of 789 days in filing the present appeal which was explained by the assessee vide affidavit dated 26.08.2022 stating therein that the order of the CIT(A) dated 31.05.2019 was not received by the assessee as the tax consultant did not inform him regarding the notice. The Ld. A.R. submitted that though the assessee has a permanent address in Ahmedabad since he was working with M/s. Assam Bambay Carriers as an in-charge of Vishakhaptnam Branch since A.Y. 2010-11 during that period the assessee did not receive the information regarding the said order of the CIT(A). When the assessee came back to Ahmedabad in August 2021, the assessee found out recovery notice dated 22.01.2020 and thereafter consulted the Chartered Accountant and Advocate. Therefore, the delay was genuine and the same should be condoned.

4. The assessee's case was re-opened on 29.03.2017 for the reason to believe that as per AIR information it was found that the assessee has deposited cash of Rs. 24,79,430/- in the bank account maintained with ICICI Bank Ltd. during the A.Y. 2009-10. The assessee had not filed any

return of income for A.Y. 2010-11 within the time limit allowed under Section 139 of the Act. The Assessing Officer issued the statutory notice which was replied by the assessee and hence order under Section 144 r.w.s. 147 of the Act was passed on 27.12.2017 by the Assessing Officer thereby making addition of Rs. 24,79,430/- on account of non-disclosed of source of cash deposits.

5. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A) on 11.04.2018. The CIT(A) dismiss the appeal on the ground of ex-parte as none appeared on behalf of the assessee as well as on the ground of delay in filing the appeal before the CIT(A).

6. The Ld. A.R. submitted that due to unavoidable circumstances the assessee could not file appeal before the Tribunal and therefore, the delay may be condoned and since the order of the CIT(A) as well as assessment order is ex-parte the matter may be remanded back to the file of the Assessing Officer for proper adjudication. The Ld. A.R. submitted that the relevant evidences / documents will be submitted to the Assessing Officer by the assessee.

7. The Ld. D.R. submitted that the assessee has not given any details before the Assessing Officer as well as not appeared before the Assessing Officer. The assessee has not appeared before the CIT(A) as well and filed the delayed appeal before the CIT(A). In fact, the assessee has not appeared before this Tribunal and the matter was only restored on 30.09.2022 and therefore, this appeal deserves to be dismissed. On the point of delay the Ld. D.R. submitted that the assessee has not taken precaution of verifying

the tax matter with his tax consultant and therefore, the delay should not condoned.

8. Heard both the parties and perused all the relevant material available on record. Prima facie it appears that the assessee is not in town during the specific period of assessment proceedings as well as the proceedings before the CIT(A) and the assessee's consultant has not taken proper measure for filing the appeal before the CIT(A) and also not appeared before the CIT(A) which is a professional lapse and cannot be attributed to the assessee. Therefore, we are condoning the delay in filing the appeal before us as well as before the CIT(A). Since the CIT(A) has not decided the issues on merit it will be appropriate to remit back the matter contested by the assessee to the file of the CIT(A) for proper adjudication on merit. It is directed that the assessee will fully cooperate with the proceedings before the CIT(A) and will not delay the proceedings. If the assessee did not appear before the CIT(A), the CIT(A) will take appropriate cognizance of the assessee's conduct and decide the matter on merit. Needless to say the assessee be given opportunity of hearing by following principle of natural justice.

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

This Order pronounced in Open Court on	19/10/2022
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Sd/-
(Ms. SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 19/10/2022
TANMAY, Sr. PS

TRUE COPY

ITA No. 241/Ahd/2021
Ishwarsingh Ramchandra Jangid vs. ITO
Asst. Year –2010-11

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad