

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1895/M/2022  
Assessment Year: 2011-12**

Mr. Mohd. Arif Hamidulla Khan, Shop No.C6, M.K. Industrial Estate, Andheri Kurla Road, Jarimari, Sakinaka, Mumbai – 400 072 <b>PAN: AOGPK1146K</b>	Vs.	Commissioner of Income Tax (Appeals)-38, Room No.402, 4 <sup>th</sup> Floor, Earnest House, NCP Marg, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Bhupendra Shah, A.R.  
Revenue by : Shri M.P. Ahuja, D.R.

Date of Hearing : 25 . 11 . 2022  
Date of Pronouncement : 23 . 12 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Mr. Mohd. Arif Hamidulla Khan (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 22.10.2018 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2011-12 on the grounds inter-alia that :-

*“1) In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming the order u/s 143(3) r.w.s. 147 passed by the Assessing Officer without deciding the case on merits and merely dismissing appeal on grounds of delay in*

*filing appeal by overlooking the fact that the delay of 7 days only due to malfunctioning of the website.*

*2) In the facts and the circumstances of the case and in law, the learned A.O erred in passing the order u/s 143(3) r.w.s 147 and therefore rendering the whole re assessment bad in law and also on the basis of borrowed satisfaction, presumption and surmises.*

*3) In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs.14,00,052/- as alleged Non-genuine purchases being 25% of the total purchases amounting to Rs.56,00,209/-.*

*a) In the facts and the circumstances of the case and in law, the learned A.Q. erred in adding Rs.14,00,052/- as alleged Non-genuine purchases being 25% of the total purchases amounting to Rs.56,00,209/-, even though the payment for purchases is made from the books by A/C payee cheques and cannot be termed as Non-genuine even though the same has been fully allowed by the jurisdictional Mumbai Tribunal in many cases.*

*b) In the facts and the circumstances of the case and in law, the learned A.O. erred in adding Rs.14,00,052/- as alleged Non-genuine purchases being 25% of the total purchases amounting to Rs.56,00,209/- only on the basis of the information on the website [www.mahavat.gov.in](http://www.mahavat.gov.in) about 6 suspicious dealers whose copy of statement recorded were not furnished to the appellant.*

*c) In the facts and the circumstances of the case and in law, the learned A.O. erred in adding Rs.14,00,052/- as alleged Non-genuine purchases without appreciating the fact that no addition can be made if the suppliers are not traceable as per the judgment of the Bombay High Court. 4) In the facts and circumstances of the case and in law, the learned AO erred in disallowing Rs.14,00,052/- as alleged Non-genuine purchases even though the payments were made by A/C Payee Cheques from the disclosed bank accounts.*

*4) In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs.21,957/- received as interest by the Appellant from co-operative bank as income from other sources.*

*5) In the facts and circumstances of the case and in law, the Assessing Officer erred in not including the deduction of Rs.1,00,000/- under chapter VI-A while computing assessed income in his assessment order.*

*6) In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(1)(c) and interest charged u/s 234 A, B, C & D.*

*(B) Relief Prayed:*

*The appellant therefore prays follows,*

- 1. To quash the order of CIT[A] passed without deciding appeal on merits.*
- 2. To quash the order for reopening the case u/s 143 r.w.s 147.*
- 3. To delete the disallowance of Rs.14,00,052/- being total alleged Non-genuine purchases of the Appellant through alleged Non-genuine suppliers by treating the same as Non-genuine and against 8 decided cases of Mumbai ITAT.*
- 4. To delete the addition of Rs.21,957/- received as interest added in the Income from other sources*
- 5. To allow deduction under chapter VI-A of Rs. 1,00,000/-*
- 6. To delete penalty levied u/s 271(1)(c) and interest charged u/s 234 A, B, C & D.*

*[C] General:-*

- The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- A Detailed paper book along with case laws will be submitted at the time of hearing.*
- There is no delay in filing of appeal because original order was neither uploaded fully nor delivered to the Appellant and therefore certified copy was to be obtained and the same was received on 29.06.2022."*

2. At the very outset, the assessee sought to condone the delay of 7 days in filing the present appeal before the Ld. CIT(A) on the ground that the assessee has prepared the physical from No.35 but due to technical problem on the website the same could not be uploaded within time. Keeping in view the fact that since everyone has not yet become conversant with the digitalization process I find it as sufficient reason to condone the delay of 7 days in filing the appeal by the assessee before the Ld. CIT(A).

3. Briefly stated facts necessary for adjudication of the issues at hand are: the assessee being proprietor of M/s. Techno Metal Industries is into the business of manufacturing and dealers of all kinds of scrap, iron and steel etc. The original return filed by the assessee declaring income of Rs.6,89,070/- was processed under section 143(1) of the Income Tax Act,1961 (for short 'the Act'). Thereafter, the assessment was reopened by recording reasons by initiating the proceedings under section 147/148 of the Act. The assessee opted to consider his return already filed in response to notice issued under section 148 of the Act. This case was reopened on the basis of information available with Directorate General of Income Tax (Investigation) (DGIT)(Inv.), Mumbai that the assessee has procured bogus purchase bills from six parties detailed as under:

S.No.	Hawala Tin	Hawala Name	F.Y.	Amount
1	27050389521V	SIDDHIVINAYAK DTEEL	2010-11	91,520
2	275205031B9V	SHRITI ENTERPRISES	2010-11	2,51,616
3	27550304371V	SURAT TUBE CORPORATION	2010-11	3,07,424
4	27860346638V	ASIAN STEEL	2010-11	29,09,773
5	27810282985V	GULAB TRADING CO	2010-11	7,36,018
6	27910508261V		2010-11	13,03,858
TOTAL				56,00,209

4. Show cause notice was given. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to hold that the assessee has inflated the purchase price/cost by procuring bogus purchase bills to the tune of Rs.56,00,209/- and thereby made an addition of Rs.14,00,052/- being 25% of the non genuine purchases and thereby framed the assessment under section 143(3) read with section 147 of the Act.

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

6. 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.

7. I have perused the order passed by the Ld. CIT(A) who has dismissed the present appeal in limine on ground of delay in filing the appeal as well as on ground of non prosecution of appeal by the assessee without going into the merits by returning following findings:

“3. Delay in filing the Appeal: The assessment order and Demand Notice have been reportedly served on the appellant on 22.10.2016 and appeal was filed on 28.11.2016. The appeal is not filed within the time prescribed u/s 249(2) of the Income Tax Act.

3.1 The appellant has not filed any submission with regard to delay in the appeal filed. This is a case wherein neither the appellant nor any other person in the capacity of Authorized Representative attended the hearing in compliance with notices issued by this office detailed in the table below:

Sr. No.	Date of Notice	Date of Hearing	Remarks
1.	15.06.2018	26.06.2018	Acknowledged receipt but none attended.
2.	16.07.2018	23.07.2018	Intimated but none attended
3.	10.10.2018	22.10.2018	Intimated but none attended.

3.2 As can be seen from the above table, the appellant has not responded to the said hearing notices even after the notice was served on the appellant in the first instance and thereafter, the appellant was intimated by postal authorities about the notice issued by this office. This demonstrates that the appellant has scant regard for the statutory notices issued to him and do not intend to avail opportunity of being heard. In view of what has been discussed above, we are of the considered view that non-compliance to the statutory notices issued and served on the appellant on the instances enumerated above, and since appellant has not produced documentary evidence to demonstrate that the delay in filing the appeal was not deliberate but due to reasons beyond the control of the appellant, the present appeal filed beyond the due date stipulated by Section 249(2) without sufficient cause is not maintainable. In the given facts and circumstances of the present case, the delay in filing the appeal is not condoned as the appeal filed is not admitted. Accordingly, the appeal of the appellant is dismissed.”

8. Bare perusal of the findings returned by the Ld. CIT(A) goes to prove that the appeal has been dismissed firstly on account of delay of 7 days as well as for want of non prosecution of the appeal filed by the assessee. No facts have been brought on record by the Ld. CIT(A) as to how much delay was there in filing the appeal rather appeal has been dismissed mechanically. No doubt in para 3.1 it is mentioned by the Ld. CIT(A) that six notices were sent and acknowledged by the assessee but the Ld. A.R. for the assessee has stated that no such notice was ever received by the assessee. Without entering into veracity of the contentions made by the assessee that he has not received any notice, I am of the considered view that to decide the issues once for all on merits and to curtail the multiplicity of the proceedings present appeal is required to be decided afresh on merits, because the Ld. CIT(A) has not decided the appeal on merits. For argument sake even if it is assumed that the assessee has not preferred to prosecute the present appeal, the Ld. CIT(A) was required to dispose of the appeal on merits.

9. In these circumstances, the impugned order passed by the Ld. CIT(A) is set aside and remitted back for deciding afresh. Needless to say that assessee shall be provided with adequate opportunity of being heard by the Ld. CIT(A). Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 23.12.2022.**

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

Mumbai, Dated: 23.12.2022.

\* 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.