

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 148/Rjt/2021
Assessment Year: 2011-12**

Smt. Rani Hareram Sahani, Kovaya, Rajula, Dist. Amreli-365540 PAN No: CNKPS4757D (Appellant)	Vs	The ITO, Ward- 3(1)(4), Rajula, Amreli (Guj.) (Respondent)
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**ITA No. 09/Rjt/2022
Assessment Year: 2017-18**

Smt. Rani Hareram Sahani, Kovaya, Rajula, Dist. Amreli-365540 PAN No: CNKPS4757D (Appellant)	Vs	The ACIT, Ward-2(4), Bhavnagar, (Respondent)
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**Assessee Represented: Shri Mehul Ranpura, A.R.
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 25-01-2023
Date of pronouncement : 31-01-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Appellate order dated 17.09.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the Re-assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The assessee's main grievance is that the Ld. CIT(A)-NFAC dismissed the appeal of the assessee who failed to condone the delay of 13 days in filing the above appeal and thereby merits of the case were not adjudicated.

2.1. The assessee's prayer for condoning the delay in filing the appeal before Ld. CIT(A)-NFAC is as follows:

Sub: Prayer for condoning the delay in filing of appeal for A.Y.2011-12.

In connection with the above, Your Honours' above named appellant most respectfully begs to submit as under:

1.0 The appellant, an Individual, is assessed to tax by the Income Tax Officer, Ward-3(1)(4), Amreli (hereinafter referred to as the "AO"). She is engaged in the business of providing services related to Gruh Udyog and allied works on small scale basis.

2.0 As the net taxable income for the assessment year under consideration was below the basic exemption limit, no return of income was filed u/s.139 of the Income-tax Act, 1961 [hereinafter referred as to the "Act"].

3.0 The AO alleged that as per the information received from the DDIT (Inv.)-2 Rajkot the appellant has paid Rs.9,99,000/- to Shri Jinabhai Vagh

towards the assignment of Insurance Policy Bajaj Alliance Life Insurance Co. and she has not explained the nature and source of this transaction in the return of income filed for AY 2011-12 and therefore held that payment made was from undisclosed sources. However, the fact is that appellant has paid premium of Rs. 99,900/- and after payment of premium the policy was assigned to the appellant. Further the appellant has not filed return of income as the income was below the taxable limits. Thus, the observation of the DDIT was wrong and AO merely borrowed the satisfaction of the DDIT and issued notice u/s 148 which is not in accordance with law.

4.0 The AO, initiated re-assessment proceedings u/s. 147 of the Act by issuing notice u/s. 148 of the Act dated 31.03.2018. In reply, the appellant has filed return of income u/s. 148 of the Act on 05.12.2018 declaring total income at Rs.1,43,870/-.

5.0 During assessment proceeding, it was explained before the AO that originally the investment in Policy of Bajaj Alliance was purchased by one customer Shri Jitendra Vagh through husband of the appellant. However due to personal reason of the customer, his cheque was dishonored. Therefore, in order to keep the policy a live and save the reputation of the sales manager appellant got assigned the policy in her name and managed to pay the premium of Rs. 99,900/- out of her own funds. AO misinterpreted the facts and sum assured of Rs.9,99,000/- was treated as payment without proper verification, though necessary clarification was given at the time of assessment proceedings.

6.0 The AO, in total disregards to the fact of case and submission made finalized the assessment vide order passed u/s. 143(3) r.w.s. 147 of the Act dated 27.12.2018 assessing the total income of appellant at Rs. 11,42,870/- wherein he made addition of Rs.9,99,000/- on the alleged ground of unexplained investment in Life Insurance Policy of Bajaj Alliance Life Insurance Co.

7.0 The above stated order was served upon to me on 15.01.2019. Due to lack of knowledge of complicated provisions of Income Tax Law, appellant has handed over the same to her husband Shri Hareram H. Sahani to take necessary action against the same. However, he has misplaced assessment order and forgot to file appeal against assessment order. Subsequently, on receipt of notice related recovery of demand for the assessment year under consideration, he realized that he missed to send the order to the Chartered Accountant for filing appeal. Under such circumstances, the appeal could not file the appeal within the prescribed time of 30 days from the date of service of appellate order.

8.0 Subsequently, the appellant had alongwith her husband have approached the legal consultant in this regard. They advised the appellant to file appeal against such impugned orders u/s. 144 r.w.s. 147 of the Act

before the Hon'ble Commissioner of Income-tax (Appeal)-3, Rajkot, with a request to condone the delay in filing the appeal.

9.0 Thus, because of the above facts, there has been occurred delays of 15 days respectively in filing of appeal before the Hon'ble CIT(A). Therefore the appeal is being filed beyond the prescribed time. The delay in filing the appeals was not intentional but because of the circumstances as stated above.

10.0 In view of the above, the appellant humbly prays before the Hon'ble Commissioner of Income-tax (Appeals) that the delay in filing the appeals may kindly be condoned and the same may please be admitted and decided on merits by exercising of Your Honour's powers vide provisions of section 249(3) of Ac. In this connection, the appellant begs to invite your honour's kind attention to the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Kathiji (MST) (1987) 167 ITR 471.

2.2. In support of this condonation petition, the assessee also filed her husband's affidavit duly notarized by Notary Public. However the Ld. CIT(A) relying upon various case laws held that the assessee failed to explain "sufficient cause" and thereby dismissed the appeal filed by the assessee as time barred.

3. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal.

1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as the "CIT(A)"] erred on facts as also in law in dismissing appeal ex-parte.

3. The Ld. CIT(A) erred on facts as also in law in rejecting the appellant's application for condoning delay in filing the appeal. The appeal may kindly be directed to be decided on merits.

4. The Ld. CIT(A) erred on facts as also in law in not deciding ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, initiation of action u/s. 147 of the Act is invalid and assessment made on such invalid initiation deserves to be quashed and may kindly be quashed.

5. The Ld. CIT(A) erred on facts as also in law in confirming addition of Rs. 9,99,000/- made on account of alleged unexplained investment in Life Insurance Policy of Bajaj Alliance Life Insurance Co. The addition confirmed is totally unjustified and uncalled for and deserves to be deleted and may kindly be deleted.

4. We have heard rival parties and perused the materials available on record including the condonation petition, supporting affidavit filed by the assessee's husband explaining thereby the delay of 13 days in filing the above appeal, the assessee has shown sufficient cause in not filing the same within the time limit. Thus we are satisfied with the reasons adduced by the assessee and thereby condone the delay of 13 days in filing the appeal before Ld. CIT(A) on the Principles of Natural Justice.

4.1. On merits, the assessment was reopened on the basis of information received from DDIT, Investigation Unit-2, Rajkot that the assessee has paid an amount of Rs. 9,99,000/- to Shri Jinabhai Vagh on 10.03.2011 for Life Insurance Policy No. 183531380/- assigned to the assessee, which the assessee has not declared in her Return of Income. The assessee filed her Return of Income on 05.12.2018 declaring total income of Rs. 1,43,870/-, which below the taxable income. Hence, she explained that she has not liable to file Return of Income. Further the assessee explained that the premium amount for Life Insurance Policy was not Rs. 9,99,000/- but only Rs. 99,900/-, which is a mistake and produced a notarized declaration by the Sales Manager of Bajaj Alliance Life Insurance Company quoting that the premium amount wrongly as Rs. 9,99,000/- instead of Rs. 99,900/- which was a typing mistake

and also produced copy of the premium paid Challan which is reproduced as follows:

Bajaj Allianz Life Insurance Co. Ltd.

To
Mr. Jinabhai Sardulbhai Vagh
At Post Kovaya
-Rajula
Kovaya
Amreli
Gujarat-365560

Date:24/11/2018

Certificate For Premium Paid
(01-APR-10 to 31-MAR-11)

Assignee: RANI HARERAM SAHANI

This is to certify that the premium under the following policies taken by the policyholder MR JINABHAI SARDULBHAI VAGH have been received by Bajaj Allianz Life Insurance Company Limited during the Financial Year 2010-2011.

Policy No.	Product	Premium Due Date	Premium Adjustment Date	Premium Type	Sum Assured	Total Premium Amount Received	Policy installment Premium	Life Insurance Premium (1)	Health Care Premium (2)
0183 5313 80	UG PROTEC TION PLUS II SIZE 1	28/08/2010	31/08/2010	First Premium	750000	99900	99900	99900	0
					Total	99900	99900	99900	0

4.2. Thus it is evident on record, the Life Insurance Premium is not Rs. 9,99,000/- but it is Rs. 99,900/- only. As per Section 149(1)(b) of the Act, which prescribes the income escaped amount is Rupees one lakh or more is to be reopened for reassessment. Thus, we find that the initiation of reassessment proceedings itself is against the provisions of 149(1)(b) of the Act and invalid in law. Therefore the same is liable to be quashed. Thus the grounds raised by the Assessee is hereby allowed.

5. In the result, the appeal filed by the Assessee is allowed.

ITA No. 09/Rjt/2022

7. This appeal is filed by the Assessee as against the Appellate order dated 1612.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), confirming the levy of penalty under section 272A(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for non-compliance on the part of the assessee to the statutory notices issued u/s. 131(1A) of the Act.

7.1. Here also, the assessee's appeal was dismissed by Ld. NFAC on the ground of 13 days delay in filing the appeal, where the assessee's failed to prove sufficient cause.

8. For the detailed reasons assigned in ITA No. 148/Rjt/2021 being the quantum appeal, since the reasons for the delay in filing this penalty appeal is also similar, we condone the delay of 13 days in filing this appeal before the Ld. CIT(A)-NFAC. Even on merits, the assessee's taxable income being less than the taxable limit prescribed under the Act, we have no hesitation in deleting the penalty levied u/s. 272A(1)(c) of the Act. Thus the grounds raised by the Assessee is hereby allowed.

9. In the result, both the appeals filed by the Assessee are allowed.

Order pronounced in the open court on 31-01-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 31/01/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट