

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2897/M/2022
Assessment Year: 2010-11**

Shri Tejas Gunvantrai Vora, 14 Ram Vihar, Brij Nagar, Rokadia Lane, Borivli (West), Mumbai – 400 092 PAN: ADGPV6382F	Vs.	Income Tax Officer, Ward 32(3)(3), Room No.105, C-Wing, 1 st Floor, BKC, Mumbai -51 New Address : Kautilya Bhavan, Bandra, Mumbai – 400051
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Ashish Kumar Deharia, D.R.

Date of Hearing : 04 . 01 . 2023
Date of Pronouncement : 19 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

At the very outset, the appellant, Shri Tejas Gunvantrai Vora (hereinafter referred to as ‘the assessee’) who did not put in appearance despite service by moving an application sought to condone the delay of 202 days on the grounds inter-alia that during proceedings before the first appellate authority details were furnished but have not been considered and he was told that the record has been misplaced within the department but ultimately order was passed against the assessee; that due to breakdown of the

covid and aftermath the assessee grappled with serious trade issues, under section 138 of Negotiable Instrument Act, court case against him, proceedings before Debts Recovery Tribunal (DRT), police FIR, death in the family etc. which restrained him from approaching the legal practitioners for filing the appeal; and that there is no malafide on the part of the assessee in filing the appeal late. We are of the considered view that in the given circumstances since the assessee after covid grappled with multiple litigation under section 138 of Negotiable Instrument Act cases before DRT and police FIR, we find it a reasonable cause with the assessee not to approach the Tribunal within limitation. In view of law laid down by the Honorable Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) that “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,” so we condone the delay in filing the present appeal.

2. The assessee by filing the present appeal, sought to set aside the impugned order dated 26.02.2020 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2010-11 on the grounds inter-alia that :-

“1. On facts and circumstances of the case and in law, the learned AO has erred in passing order u/s 143 (3) r.w.s. 147 rendering assessment null and void.

2. On facts and circumstances of the case and in law, the learned AO and CIT (A) has erred in ignoring material at their disposal as well as denying verification of fresh evidence.

3. On facts and circumstances of the case and in law, the learned AO has erred in treating genuine purchases and expenses as being bogus.

4. On facts and circumstances of the case and in law, the learned AO and CIT(A) has erred in not offering opportunity to verify by asking for remand report proceedings.

5. On facts and circumstances of the case and in law, the learned AO and CIT (A) has erred in passing order in hurry without application of mind. The order is void ab-initio and liable to be quashed.

The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal.

PRAYER:

The Appellant prays that the addition on account of non-genuine purchases of Rs.14.37 lakhs be deleted.

The Appellant further prays that the addition on account of disallowance of expenses of Rs. 2.32 lakhs be deleted.”

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the assessee, proprietorship concern is carrying on the business of trading-wholesalers. Initial return of income filed by the assessee at the total income at Rs.9,12,483/- was processed under section 143(1) of the Income Tax Act,1961 (for short ‘the Act’). Subsequently on receipt of information from Sales Tax Department and Directorate General of Income Tax (Investigation) (DGIT) (Inv.) that some of the businessmen have indulged in the acceptance of bogus purchase bills from the bogus hawala bills provider and the assessee is one of such beneficiaries as detailed in the table below:

Sr. No.	TIN No.	Name of Parties	F.Y.	Amount (Rs)
1.	27760622173V	DHRUV SALES CORPORATION	2009-10	83,918
2.	27310540795V	OM CORPORATION	2009-10	4,25,526
3.	27420506930V	ANMOL INDUSTRIES	2009-10	1,56,967

4.	27450524228V	NAMAN ENTERPRISES	2009-10	63,170
5.	27570522901V	SILVER LINING ENTERPRISES	2009-10	84,968
6.	27780573759V	RAJ INTERNATIONAL	2009-10	87,204
7-	27520680505V	BHAVANI TRADE LINK	2009-10	12,33,279
8.	27870658730V	PAYAL ENTERPRISE	2009-10	13,82,259
9.	27470616755V	SOMNATH INTERNATIONAL	2009-10	10,20,329
10.	L 27710551730V	M R CORPORATION	2009-10	22,44,502
. 11.	27540616280V	NAVDEEP TRADING CORPN.	2009-10	59,550
12.	27810355056V	GRIFTON INDIA RIDDHI ENTERPRISE	2009-10	1,46,047
13.	27460654736V	SAVITA INTERNATIONAL	2009-10	13,75,457
14.	27850669023V	MAGNUM ENTERPRISES	2009-10	12,19,177
			TOTAL	Rs.95,82,353/-

On the basis of aforesaid information reopening of the assessment was initiated under section 147/148 of the Act. In response to the notice issued under section 143(2) and 142(1) of the Act the assessee himself appeared but failed to file details or explanation called for except return of income despite availing numerous opportunities. As per information received the assessee found to have shown purchases of Rs.95,82,353/- from the aforesaid parties during the year under consideration. The assessee even failed to provide the latest address of alleged hawala parties nor himself produced them for verification of the alleged purchases. Consequently, the AO proceeded to make disallowance of Rs.14,37,353/- on account of non genuine purchases and also made addition of Rs.2,32,154/- being 10% of the various expenses debited in the profit and loss account on his failure to get the same

verified and thereby framed the assessment under section 143 read with section 147 of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has decided the appeal ex-parte on alleged failure of the assessee to put in appearance despite service. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

5. The assessee filed the present appeal on 15/11/2022 thereafter notices through RPAD were issued which were not received served/unserved and presumed to have been received by the assessee but none appeared on behalf of the assessee. So the Bench has decided to dispose of the present appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to prove that the assessee failed to put in appearance before the Ld. CIT(A) in his appeal despite issuance of notice. Perusal of the table given at para 2.1 of the impugned order passed by Ld. CIT(A) goes to prove that on the first date of hearing i.e. 21.06.2017 the assessee filed adjournment letter and case was adjourned to 19.01. 2018 thereafter the case kept on adjourning for 6 times but notice issued to him stated to have been received back non complied. It means that the assessee has not been served for all the 6 dates fixed for hearing by Ld. CIT(A).

7. No doubt the Ld. CIT(A) has also disposed of the appeal on merits but we are of the considered view that when the assessee has not appeared nor served despite adjourning the case for numerous dates, nor could file any detail/explanation, it is a case of not granting the adequate opportunity of being heard to the assessee. To decide the issue once for all and to curtail the multiplicity of the proceedings, case is required to be disposed of on merits by the Ld. CIT(A) by providing adequate opportunity of being heard to the assessee.

8. Consequently, impugned order passed by Ld. CIT(A) is hereby set aside and remanded back to the Ld. CIT(A) to decide fresh after providing adequate opportunity of being heard to the assessee.

9. In the result, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 19.01.2023.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 19.01.2023.

* 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.