

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 77 & 78/Srt/2023
(Assessment Year: 2010-11 & 2011-12)
(Physical hearing)

Nasim Vazir Shaikh, Shop No. 78, Gram panchayat Shopping Centre, Opp: Badirya Hotel, Bhilad Road, Sanjan-396170. PAN No. AHKPS 9893 C	Vs.	I.T.O., Ward-5, Vapi.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Suresh K Kabra, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of institution of appeal	02/02/2023
Date of hearing	17/03/2023
Date of pronouncement	17/03/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by the assessee are directed against the separate orders of National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals), (in short, the Id. CIT(A)) dated 20/05/2022 and 27/03/2022 for the Assessment Year (AY) 2010-11 and 2011-12. Both the appeals are interconnected, thus, both the appeals were clubbed, heard together and are decided by consolidated order. For appreciation of facts, I take ITA No. 77/Srt/2023 for the A.Y. 2010-11 as a lead case.
2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that there is delay of about 80 days in filing the present appeal before the Tribunal. The assessee has filed his affidavit

for seeking condonation of delay. The Id. AR of the assessee submits that at the time of first appellate stage, the assessee was represented through tax consultant Shri Jayesh Bhai Pujara. The assessee was not well-versed with the faceless procedure. His consultant has given his e-mail and mobile number for service of notice and order of Income tax Authorities/CIT(A). His consultant has not informed about the decision of Id. NFAC/CIT(A), if communicated to him through e-mail or not. In September 2022, the assessee realised that his appeal is dismissed when demand of recovery was pressed. The assessee immediately obtained the order of Id. CIT(A) and contacted new consultant. In October, 2022, the assessee contacted C.A. Shri Priyesh Ghetia of G B Laddha & Co at Vapi. After discussing the matter with him, he advised the assessee to file appeal before the Tribunal at Surat. For filing of appeal before the Tribunal at Surat, the assessee contacted me (Suresh Kabra, CA). As per discussion, the appeal fees was paid on 08/12/2022 for both the years. Unfortunately, all of a sudden, father of the present A.R was expired on 09/12/2022. The present AR could not attend his office and registry office of ITAT, Surat for filing appeal and could be filed only on 02/02/2023. The Id. AR submits that the appeal fees was paid on 08/12/2022. Non-filing of appeal before the month of December, 2022 was for the reasons that the assessee realised about dismissal of appeal in September, 2022 and in October, 2022 he could search another authorised representative.

In the month of November, 2022, the matter was discussed with him, unfortunately, in the second week of December, 2022, father of present AR was expired. The Id. AR submits that non-filing of appeal before the Tribunal was neither intentional nor deliberate but due to reasons explained above. The assessee has good case on merit and likely to succeed if opportunity of hearing of given. The Id. AR further submits that the Id. CIT(A) dismissed the appeal of assessee in an ex parte proceeding without discussing the merit of the case. In fact, as submitted earlier notice of hearing was not came to the notice of assessee due to lapses on behalf of his earlier representative. The Id. AR submits that he undertakes on behalf of assessee to be more vigilant in attending the hearing before the Id. CIT(A).

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the approach of the assessee is casual in attending the hearing before the Id. CIT(A). The assessee has not filed his submission despite granting sufficient time and opportunity to the assessee. On the issue of condonation of delay, the Id. Sr. DR for the revenue submits that the assessee failed to show reasonable cause for condoning the delay. The appeal of assessee was dismissed in May, 2022 and that as per assessee's own averment, the assessee came to know of dismissal of appeal in September, 2022. The Id. Sr. DR for revenue prayed for dismissal of appeal for condonation of delay.

4. I have considered the submissions of the Id. AR of the assessee and the Id. Sr. DR for the Revenue on the issue of condonation of delay. As per submission of Id. AR of the assessee, the assessee realised about the dismissal of appeal in September, 2022 and make effort to obtain the copy of order of Id. CIT(A). The assessee obtained the order of Id. CIT(A) in the month of October, 2022 and after engaging another counsel, approached the present Id. AR. The Id. AR fairly submitted that the assessee approached him in the first week of December and appeal fees was deposited on 08/12/2022. Unfortunately, the father of present A.R. expired on 09/12/2022. From the facts explained before me, I find that the assessee has shown sufficient cause for condonation of delay. Further, I find that the appeal fees was deposited on 08/12/2022. I also noted that the father of Id. A.R. of assessee died on 09/12/2022. This fact is not in dispute as the Id. representative is one of the leading counsel in Surat Bench. It is matter of record this appeal was filed only on 02/02/2023. Considering the overall facts and circumstances of the case, I find that there is no intentional or deliberate delay in filing the appeal before the Tribunal. It is settled law that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Thus, keeping in view such principle, the delay in filing the appeal is condoned. Now adverting to the merit of the case.

5. On merit, I find that the Id. CIT(A) has dismissed the appeal of assessee without discussing the grounds of appeal in an ex parte proceeding. As recorded above while considering the condonation of delay, the Id. AR of the assessee submitted that he was not informed by his earlier representative and the assessee is not well-versed with the faceless hearing. The notice if any was not served to the assessee directly rather may have been sent on e-mail on his earlier representative who has not informed the assessee. Considering the fact that the assessee remained unrepresented before the Id. CIT(A), therefore, I deem it appropriate to restore the appeal to the file of Id. CIT(A) to adjudicate the issue on merit. Needless to direct that before passing the order, the Id. CIT(A)/NFAC shall grant fair and reasonable opportunity of hearing to the assessee. The assessee is also directed to be more vigilant and to make compliance in time and without any further delay.
6. In the result, this appeal of assessee is allowed for statistical purposes.

ITA No.78/Srt/2023 for the A.Y. 2011-12

7. The facts in this appeal, is also similar, the assessee has raised similar grounds of appeal as raised in appeal in ITA No. 77/Srt/2023 for A.Y. 2010-11, except variation of amount of disallowance/additions. Considering the fact that I have condoned the delay in filing appeal in ITA No. 11/Srt/2023 and restored back the case to the file of the Id. CIT(A)/NFAC for adjudication afresh, therefore, considering the principle

of consistency, this appeal is also restored back the file to the Id.
CIT(A)/NFAC with similar findings.

8. In the result, both the appeals of the assessee are allowed for statistical purposes only.

Order pronounced in the open court on 17th March, 2023.

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

Surat, Dated: 17/03/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat

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