

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 09/Srt/2023 (Assessment Year 2011-12)
(Virtual hearing)

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| Dipti Divyesh Modi, 452/453, Avadh Vice-Roy Sarthana Jakatnaka, Surat-395006. PAN No. AMYPM 3762 H | Vs. | I.T.O., Ward-1(3)(6), Surat. |
| Appellant/ assessee | | Respondent/ revenue |

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| Assessee represented by | Shri P.M. Jagasheth, CA |
| Department represented by | Shri Vinod Kumar, Sr. DR |
| Date of Institution of appeal | 02/01/2023 |
| Date of hearing | 25/04/2023 |
| Date of pronouncement | 25/04/2023 |

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 11/11/2022 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

"1. The Id. CIT(A) has grossly erred in not condoning delay of one day in filing of appeal u/s 246A of the Income Tax Act, 1961.

2. The Id. CIT(A) has wrongly confirmed the addition of Rs. 30,73,790/- without considering the material available on record."

2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the Id. CIT(A) dismissed the appeal of assessee by taking a view that the appeal of assessee is delayed by one day in filing appeal before the Id. CIT(A). The Id. AR of the assessee

submits that the Assessing officer passed the assessment order on 28/10/2018 and the appeal before the Id. CIT(A) was filed on 28/11/2018. The Id. AR of the assessee submits that if one day is excluded while calculating the period of limitation, the appeal of assessee was within time. The Id. AR in his without prejudice submission, submitted that it was merely a miscalculation of time period and the assessee has no deliberate and malafide intention in filing appeal before the Id. CIT(A) belatedly, if any. The Id. AR for assessee submits that the substantial right of assessee are involved in the present appeal. The Id. CIT(A) not admitted the appeal for technical reasons by taking view that the appeal is filed after one day of period of limitation. The Id. AR of the assessee prayed that the delay if any in filing appeal before the Id. CIT(A) may be condoned and matter may be restored to the file of Id. CIT(A) for adjudication of various grounds of appeal on merit.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that he left the issue at the discretion of the Bench.
4. I have considered the submissions of both the parties and find merit in the submission of Id. AR of the assessee that delay if any of one day is only for miscalculation of time period in filing appeal before the Id. CIT(A) which I accept and condone one day delay in filing appeal before the Id. CIT(A). Considering the fact that the impugned one-day delay is

condoned. As the Id CIT(A) has not adjudicated various grounds of appeal, therefore, I restore the matter back to the file of Id. CIT(A) for deciding the issue afresh after giving opportunity of hearing to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order announced in open court on 25th April 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 25/04/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File
- 6.

By order

Sr. Private Secretary, ITAT, Surat