

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

ITA No. 189/Srt/2023 (Assessment Year 2011-12)  
(Virtual hearing)

Kashyap Kamleshbhai Parekh, A-13, Aalekh Co-operative Society, Near N.K. Petroleum, Zadeshwar, Bharuch-392011. <b>PAN No. AKFPP 3523 L</b>	Vs.	I.T.O., Ward-1(4)(6), Bharuch.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Hemant Suthar, AR
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of appeal	20/03/2023
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 20/06/2022 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

- “1. The Id. CIT(A), NFAC has erred in law and in facts in dismissing the appeal ex parte without affording reasonable opportunity of being heard and for want of prosecution. The appeal of the appellant may kindly be restored to the file of Id. CIT(A), NFAC and may please be directed to afford reasonable opportunity of being heard.*
- 2. The Id. CIT(A),NFAC even in deciding the appeal and dismissing it ex parte ought to have dealt with the merits of the issues involved and decided the appeal on merits by a speaking order observing the principles of natural justice. The order of the Id. CIT(A), NFAC may please be set aside.*

3. *Without prejudice to the above, the Id. CIT(A) has erred in confirming the additions made by the Id. A.O. amounting to Rs. 14,08,070/- for the amount received as undisclosed income without considering the facts and therefore the same is bad in law and the order passed is prayed to be quashed.*
  4. *Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended."*
2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that there is delay of 213 days in filing the appeal before the Tribunal. The assessee has filed application for condonation of delay. The application is supported by affidavit of assessee. The Id. AR of the assessee submits that the assessee engaged Dhiraj Agarwal, CA for filing and pursuing appeal before the Id. CIT(A). In Form-35 (appeal form for filing appeal) before the Id. CIT(A), Dhiraj Agrawal, CA has given his e-mail as well as telephone number. The notices if any was served on his e-mail address. The assessee enquired about the outcome of his appeal, however, on making further enquiry on ITBA Portal, Dhiraj Agarwal, CA informed the assessee that notice of recovery of various years is uploaded against the PAN number of assessee. The assessee was also told that his appeal is already dismissed on 20/06/2022. The Id. AR further submits that Shri Dhiraj Agarwal, CA neither informed about the various compliances/non-compliances nor informed the assessee about dismissal of his appeal. He told the assessee only when the assessee enquired from him in the month of February, 2023. On coming to know about dismissal of appeal, the assessee immediately filed appeal before the Tribunal. The

Id. AR of the assessee submits that the Id. CIT(A) rejected/dismissed the appeal for non-prosecution as well as non-compliance without discussing the merit of the case. The Id. CIT(A) has not discussed the merits of the case. Though statement of facts were uploaded alongwith Form-35. The Id. AR of the assessee submits that the delay in filing appeal before the Tribunal is neither intentional nor deliberate but due to the negligence of Dhiraj Agarwal, CA. The assessee will suffer irreparable loss if the assessee is not heard on merit. The Id AR for the assessee prayed for condoning the delay in filing appeal and to restore the grounds of appeal to the file of Id CIT(A) on merit.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the assessee's act is casual in attending the hearing before the Id. CIT(A) nor filed appeal before the Id. CIT(A) on time even the assessment order was passed under Section 144 of the Income Tax Act, 1961 (in short, the Act). Thus, the assessee is habitual defaulter in not making proper and timely compliance. The Id. Sr.DR submits that the assessee has not explained the delay properly. To support his submission, the Id. Sr. DR has relied upon the decision of Hon'ble Apex Court Civil Appeal No.7696 of 2021 in the case of Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & Ors.
4. I have considered the submissions of both the parties and perused material on record. I find that the assessment was completed under

Section 144 of the Act by making various additions aggregating of Rs. 14,08,070/-, which consist of addition under Section 69A of Rs. 10.87 lacks as cash credit in bank account, unexplained salary income of Rs. 2,35 lacs and Rs. 84,875/- other credit in bank. The assessee filed appeal before the Id. CIT(A). The appeal was dismissed by the Id. CIT(A) for want of prosecution. The Id. CIT(A) while dismissing the appeal, held that the assessee was given various notices through e-mail as furnished by assessee on Form No. 35. No written submission was furnished by assessee in response to such notices. The Id. CIT(A) dismissed the appeal in limine. The Id. CIT(A) has not passed the order on merit. Before me, the Id. AR of the assessee vehemently submitted that non-compliance before the Id. CIT(A) was due to the negligence of Shri Dhiraj Agrawal, CA. The assessee has no deliberate or malafide intention in filing appeal belatedly. I find that the delay in filing appeal is not intentional or deliberate but for the negligence of person who was engaged by the assessee for filing and pursuing appeal before Id. CIT(A). I am of the view that if technical consideration is pitted against cause of substantial justice, the cause of justice must be preferred. Therefore, the delay of 213 days in filing appeal is condoned. So far as reliance on the case law by Id Sr DR is concerned in Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & Ors (supra) is concerned, with utmost regard to the said decision, I find that facts of the present appeal is at variance. With utmost regard the

ratio of the said decision, I find that in that case, the High Court has not observed that there was any sufficient cause explaining the huge delay of 1011 days was made out. However, in the present appeal there is delay of about 250 days and the assessee has shown sufficient cause, which is reasonable one.

5. Now adverting to the merit of the case, I find that the Id. CIT(A) has not decided various grounds of appeal on merit, therefore, therefore, the order of Id. CIT(A) is set aside and all the grounds of appeal raised by the assessee are restored back to the file of Id. CIT(A)/NFAC to decide all the grounds of appeal afresh and in accordance with law. Needless to direct that before passing the order, the Id. CIT(A) shall grant reasonable opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all the details and his submissions on various grounds of appeal raised by him, as soon as possible, if so desired without any further delay.

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

Order announced in open court on 25<sup>th</sup> April 2023.

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

Surat, Dated: 25/04/2023

*\*Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat