

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

ITA No. 45/Srt/2023 (Assessment Year 2017-18)

(Physical hearing)

Shashikant Kalyanbhai Patel, 659, Sapoliya Street, Ramshila Chowk, Shuklatirth, Bharuch-392030. PAN No. ADLPP 4184 C	Vs.	I.T.O., Ward 1(5), Bharuch.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Siddhi Patel, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	24/01/2023
Date of hearing	26/04/2023
Date of pronouncement	26/04/2023

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 07/04/2022 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

- “1. Both the lower authorities have erred in law and facts by making high pitch addition of Rs. 15,46,000/- on account of cash deposit made during the demonetization period (09/11/2016 to 30/12/2016) and thereby raised high pitch demand of Rs. 16,00,313/- without considering the documents and/or supporting evidences already available on record.*
- 2. Both the lower authorities have erred both in law and on the facts in making/confirming the addition of Rs. 15,46,000/- u/s 68 r.w.s. 115BBE of the Act on account of alleged unexplained cash credit by wrongly invoking Section 68 of the Act without considering the mandatory requirement of invoking the Section under the Act.*

3. *Both the lower authorities have erred both in law and on the facts in confirming the addition by not considering the past cash withdrawals from the bank account, agriculture income earned and past savings etc. and simply finalize the assessment proceedings and unnecessarily thrown the appellant under the cumbersome litigation process.*
 4. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring explanations and/or information available on record which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and principles of natural justice and therefore deserves to be quashed.*
 5. *The Id. CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234A/234B/234C of the Act.*
 6. *The Id. CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s 272A(1)(d) and 271AAC of the Act.*
 7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*
2. Rival submissions of both the parties have been heard and record perused. From perusal of record, I find that there is delay of 232 days in filing appeal before the Tribunal, the assessee has filed his affidavit for explaining the cause of delay. The learned Authorised Representative (Id. AR) of the assessee submits that the order Id NFAC was on 07.04.2022 and this appeal was filed on 24.01.2023. The Id AR for the assessee submits that assessee was in serious depression and suffering from Level-3 Physical Psychotic disorder with other related ailment and mental disorder. The doctor who were treating the assessee has given certificate to this effect. On little bit recovery from such position, the assessee realized for taking step for filing appeal and the appeal was filed immediately. The Id. AR of the assessee submits that there was no intentional or deliberate delay in

filing appeal before the Tribunal. The Id. AR of the assessee further submits that the assessee has good case on merit and likely to succeed. The Assessing Officer as well as Id. CIT(A) passed the orders in absence of proper representation or evidence before them. The Id. AR of the assessee submits that the assessee be given one more opportunity to explain his case on merit. The Id AR for the assessee also submits that the assessee has good case on merit, both the lower authorities passed ex-party order. The Id AR for the assessee prayed that one more opportunity may be allowed to the assessee to explain the facts before assessing officer.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the assessee has merely filed a medical certificate which is not supported with any other evidence like prescription or medical bills. The Id. Sr. DR finally submits that he left the issue of condonation of delay on the discretion of Bench. On merit the Id SR DR for the revenue submits that the assessee is habitual defaulter in not making compliance to the various notices of the department and deserve no leniency.
4. I have considered the submissions of both the parties and find that the impugned order was passed by the Id. CIT(A) on 07/04/2022, however, the present appeal is filed 24/01/2023. The registry of this Tribunal calculated the delay of 232 days in filing appeal. The Id. AR of the assessee vehemently argued that the assessee was in

depression and declared level-3 Physical Psychotic disorder with schizoappactis disorder and was advised complete medical and bed rest and not to take stress. I find that the assessee has also filed affidavit which is supported by medical certificate of Dr. Vinod Vyas M.D. (Psychiatry). Considering the contents of affidavit which is duly supported by medical certificate of a qualified doctor, therefore, I find that it is sufficient and reasonable cause and grounds for condoning the delay of 232 days in filing the appeal. Thus, the delay in filing appeal is condoned.

5. On merit, I find that the Assessing Officer passed the assessment order under Section 144 by making addition of Rs. 15,46,000/- on account of unexplained cash credit under Section 68. The Assessing Officer made addition by holding that the assessee failed to furnish necessary details about the cash credit in bank account of assessee with Bank of Baroda aggregating of Rs. 15,46,000/-. The Id. CIT(A) also confirmed the addition for want of submission and necessary evidences. Therefore, I think it appropriate to restore the grounds of appeal back to the file of Assessing Officer to consider the case afresh by giving adequate 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 and evidences on various grounds of appeal raised by him, as soon as possible, if so desired

without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal of assessee is allowed for statistical purposes only.

Order announced in open court on 26th April 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 26/04/2023
**Ranjan*
Copy to:
1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat