

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 190/SRT/2022 (AY: 2011-12)
(Hearing in Physical Court)

Raju Bhikhabhai Bhagat, 105, Sultanabad, Bawal Falia, Dumas, Surat-395007. PAN: ALJPB 6062 B	Vs.	I.T.O., Ward 2(3)(5), Surat.
APPELLANT		RESPONDEDNT

Assessee by	Shri P.M. Jagasheth, CA
Department by	Shri Vinod Kumar, Sr. DR
Date of hearing	24/02/2023
Date of pronouncement	12/05/2023

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 20/12/2021 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:-

- "1. The Id. CIT(A) grossly erred in confirming addition of Rs. 16,50,000/- being cash deposit in the bank account with Bank of India as discussed in para 6 of the appeal order.*
- 2. The Id. CIT(A) grossly erred in confirming addition of Rs. 36,05,190/- on account of alleged unexplained investment in the property as per para 8 of the appeal order.*
- 3. The Id. CIT(A) grossly erred in not appreciating the written submission and paper book and also the order of his brother Shri Jashwant B. Bhagat wherein the ground No. 2 was squarely involved. The*

appellant had filed online submission in the faceless proceedings on 10/12/2021.”

2. Brief facts of the case are that no return of income was filed by assessee for A.Y. 2010-11. The case of assessee was reopened on the basis of information that the assessee has made cash deposit of Rs. 11.50 lacs and term deposit of Rs. 5.00 lacs and further purchased immovable property for a consideration of Rs. 34,03,800/-. On the basis of such information, the Assessing Officer was having reason to believe that income of assessee to the extent of deposit in the bank, term deposit and investment in immovable property has escaped assessment for the A.Y. 2011-12. The Assessing Officer after recording reasons issued notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) dated 26/03/2018 to file return of income within 30 days. The Assessing Officer recorded that the assessee failed to file return of income in response to notice under Section 148 of the Act. The Assessing Officer issued various notices under Section 142(1) of the Act and recorded that despite repeated notices, the assessee neither attended nor furnished necessary details, therefore, the Assessing Officer made addition of Rs. 16.50 lacs on account of unexplained cash credit/cash deposit in the bank account and investment of Rs. 34,03,800/- and expenses of registration of such transaction for purchase of property of Rs. 1,67,000/- on account of

stamp duty and Registrar fee of Rs. 34,390/- thereby total addition of Rs. 36,05,190/- in the assessment order dated 06/11/2018 passed under Section r.w.s. 147 of the Act.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A) on 08/12/2018. The appeal of assessee was dismissed by the Id. CIT(A) by holding that the assessee was given ample opportunity to file submission on the grounds of appeal against the additions in the assessment order. The assessee failed to furnish his submission and only affidavit is filed which is not sufficient to explain and substantiate the contention to grant relief, thus, the appeal of assessee was dismissed vide order dated 20/12/2021. Further aggrieved, the assessee has filed the present appeal before the Tribunal.
4. Perusal of record shows that the impugned order was passed by the Id. CIT(A) on 20/12/2021, however, this appeal was filed only on 17/06/2022 thus, there is substantial delay in filing appeal before the Tribunal. The Registry of this Tribunal has issued a defect memo calculating 114 days of delay in filing appeal. The assessee has filed application for condonation of delay in filing appeal before the Tribunal. In the application, the assessee has contended that he is a farmer and not much educated and not aware about the technicalities of filing appeal before the Income Tax Appellate Tribunal. The order

of Id. CIT(A) relating to his appeal was uploaded on portal on 20/12/2021. During such period, his son namely Yash Bhagat was suffering by chest tumour and he was operated in the month of May, 2022. Copy of medical certificates and diagnosis are filed. The assessee was busy in treatment of his son. In the month of June, 2022, he visited office of his consultant and was advised to file appeal immediately. The assessee further contended that out of total period of delay of 114 days, partial period of 65 days is covered by the decision of Hon'ble Apex Court in M.A. No. 21/2022 in Suo Moto Writ Petition No. 3/2020.

5. The learned Authorised Representative (Id. AR) of the assessee submits that delay in filing appeal was neither intentional nor deliberate but for the reasons that son of assessee was seriously sick due to chest tumour and the assessee was busy in pursuing his treatment. The assessee has good case on merit and likely to succeed if his appeal is heard on merit. The Id. AR of the assessee further submits that the assessee was under the impression that the Id. CIT(A) may have given relief to the assessee as in his brother's case on similar addition on account of investment on purchase of land was deleted, copy of decision of Id CIT(A) dated 22.09.2020 is filed. The Id. AR of the assessee submits that there is sufficient reason for condoning the delay.

6. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the assessee was casual in pursuing his appeal before the Id. CIT(A). Even no submission or explanation was filed before the Assessing Officer despite giving a number of opportunities. The assessee does not deserve any leniency for condonation of delay.
7. We have considered the submissions of both the parties and perused the record. We find that the impugned order was passed by the Id. CIT(A) on 20/12/2021, however, the present appeal was filed on 17/06/2022, thus the Registry of the Tribunal has worked out the delay of 114 days in filing appeal. We further find that the Hon'ble Apex Court in Suo Moto Writ Petition No 3/2020 in M.A. No. 21/22 dated 10/01/2022 extended the period of limitation between 15/03/2020 till 28/02/2022 and further 90 days grace period was given from 01/03/2022. Thus, substantial part of delay is covered by the decision of Hon'ble Apex Court, and by excluding the time period allowed by the Hon'ble Apex Court, there is only 19 days delay in filing the present appeal before the Tribunal. Considering the fact that the assessee has filed medical certificate and diagnosis about the sickness of son of assessee in the month of May, 2022, we find that there is sufficient and reasonable cause for condoning the delay in filing the

appeal. Considering the aforesaid factual matrix of the present case, we condone the delay in filing appeal.

8. Now advertng to the merit of the case. The Id. AR of the assessee submits that the assessee was employed on a ship and used to remain out of India during the period under consideration. The assessee was paid wages in cash on ship in foreign exchange which was encashed in India through authorised dealer. The assessee had accumulated salaries on ship. The assessee was also having some agricultural holding and the sale proceed of agricultural product was also kept in cash. The assessee made deposit in bank from his salary, agricultural income and redeposit of cash and some savings from selling of milk. The assessee could not make compliance before the Assessing Officer as he used to remain out of India, for which the copy of passport has been filed. Though, he engaged income tax consultant namely Hiren Rajput through his brother Rajeshbhai Bhikhabhai Bhagat to make representation before the Income Tax Authorities. The said consultant did not attend the hearing and ultimately assessment under Section 144 was passed.
9. On the addition of unexplained investment, the Id. AR of the assessee submits that due to non-compliance and negligence of tax consultant, the addition was made. The Id. AR of the assessee submits that the investment in agricultural land was made by his father on selling his

other agricultural land which he owned. His father sold agricultural land and purchased another agricultural land in the name of his three sons including the assessee. The case of brother of assessee namely Jashvant Bhikhabhai Bhagat was also reopened on similar reasons. However, on appeal before the Id. CIT(A), the addition in case of Jashvant Bhikhabhai Bhagat was deleted by the Id. CIT(A) vide order dated 22/09/2020 passed in appeal No. ITBA/APL/S/250/2020-21/1028032676(1). However, the case of assessee was migrated to NFAC wherein both the additions were upheld in ex-parte proceedings.

10. The Id. AR of the assessee submits that the addition on account of investment in land is squarely covered by the decision in assessee's brothers case Jashvant Bhikhabhai Bhagat dated 22/09/2020 wherein the Id. CIT(A) after detailed discussion and seeking remand report from the Assessing Officer accepted that the investment in the land in the name of assessee and his two brothers were made by their father. The Id. AR of the assessee further submits that in all fairness, he prayed that the matter may be restored to the file of Assessing Officer for verification of fact and grant appropriate relief on the ground No. 2 on the basis of decision of Id. CIT(A) in assessee's brother's case.

11. On ground No. 1 which relates to cash credit, the Id. AR of the assessee submits that he may be given opportunity to explain the cash deposit before the Assessing Officer. The source of cash deposits is from the salary income, agriculture income and sales of Milk. The Id. AR of the assessee submits that the assessee is not much educated, however, he was employed with the ship and most of time, the assessee used to be out of India. The Id. AR of the assessee also furnished copy of passport of assessee showing the endorsement on his passport about leaving the territory of India.
12. On the other hand, the Id. Sr. DR for the revenue submits that the assessee was given sufficient opportunity by the Assessing Officer as well as by the Id. CIT(A) and the assessee failed to avail such opportunity.
13. We have considered the submissions of both the parties and gone through the orders of lower authorities carefully. There is no dispute that the Assessing Officer made both the additions in the assessment order passed under Section 144 of the Act by taking a view that despite giving sufficient opportunity, the assessee failed to furnish necessary reply and explanation. The Id CIT(A) upheld the addition in ex-parte proceedings. Before us, the Id. AR of the assessee vehemently submitted that the assessee is not much educated, however, he was employed with the ship and most of time, the

assessee used to be out of India. The Id. AR of the assessee also furnished copy of passport of assessee showing the endorsement on his passport about leaving the territory of India. The Id. AR of assessee also submitted that the consultant engaged by the assessee has not given complete details before the lower authorities. Considering the submission of Id. AR of the assessee, we find that the assessee deserve one more opportunity for explaining and substantiating the grounds of appeal raised by the assessee.

14. We find one more reason that in assessee's brother's case, similar addition on account of investment in land was made, however, on appeal before the Id. CIT(A), he was given full relief by accepting the explanation that investment in the said land which was jointly purchased in the name of assessee and his two brothers was made by their father, therefore, the Assessing Officer shall consider the order of Id. CIT(A) dated 20/09/2020 and to give full relief to the assessee on such issue after verification of fact. So far as other addition which relates to cash credit in bank account and term deposit, the assessee is given opportunity to file necessary evidence and explanation before the Assessing Officer. The Assessing Officer is also directed to provide opportunity to the assessee and pass the order in accordance with law. Accordingly, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced on 12/05/2023 in open court.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 12/05/2023

**Ranjan*

Copy to:

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

By Order

Sr. Private Secretary, ITAT Surat