

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.215/SRT/2022**

**Assessment Year: (2013-14)**

**(Virtual Hearing)**

Shri Murli Fatandas Sawlani, C/o. Ketan H. Shah, Advocate, 9 <sup>th</sup> Floor, Soppire Ciomplex, C.G. Road, Navrangpura, Ahmedabad – 380009.	<b>Vs.</b>	The ITO, Ward – 1(3)(3), Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADEPS9862M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Ketan Shah, AR and Shri Aman K. Shah, AR
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	25/04/2023
<b>Date of Pronouncement</b>	17/05/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeals filed by the assessee, pertaining to Assessment Year (AY) 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-2, Surat [in short “the Id. CIT(A)”] in Appeal No. CAS/2/75/2016-17, dated 29.08.2017, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 30.03.2016.

2. At the outset, Ld. Counsel for the assessee informs the Bench that appeal filed by the assessee for AY.2013-14 is barred by limitation by one thousand eight hundred twenty five (1825) days. The Ld. Counsel submitted the petition for condonation of delay, which is reproduced below:

*“I, Murli Son of Fatandas Sawlani age about 63 years, residing at Sawlani Estate, Surat do hereby solemnly affirm as under:*

*1. That, I have filed my return of income for the AY 2013-14 on 23-11-2013 and thereafter, there was 143(3) assessments made making addition in reference to*

deemed dividend as well as applying sec. 14A and revised assessed income determined at Rs. 2,26,08,463/-.

2. Thereafter, that we have filed the appeal before CIT(A) on 11-06-2016.
3. There was notice of hearing dated 16-03-2017 fixing date of hearing on 28-03-2017 by CIT(A) 2, Surat by Prasenjit Singh. Thereafter, there is an order passed by CIT(A)-2, dated 29-08-2017 wherein, the appeal of the assessee was determined by way of non-appearance. No physical copy of this order has been served.
4. In the body of the appeal order para 5.1.1, there is mentioning of various dates of hearing and adjournment asked for from time to time.
5. That, in response to the notice of hearing fix on 23-08-2017, I have filed adjournment letter physically dated 23-08-2017, enclosed as per Annexure - 'A' and email was also made to the CIT(A)2 as per Annexure - 'B' to this affidavit.
6. That surprisingly, the CIT(A) himself has granted next date of hearing on 04-09-2017 for AY 2008-09 and 2013-14, that, surprisingly the order is passed by CIT(A) dated 29-08-2017, before date of the adjournment granted by him.
7. That, I have engaged the advocate from Ahmedabad namely Ketan H. Shah however, due to the personal difficulties, he could not able to appear at Surat.
8. That, the aforesaid appeal order is dated 29.08.2017 and the appeal to the ITAT is due for the filing on or before 28.10.2017, however, I am filing this appeal in the month of July 2022 and therefore, there is delay in filing the appeal.
9. That, no such ex-party order passed for the AY 2008-09 and last date of hearing fixed on 13-01-2021. We have filed the written submission for AY 2008-09 today i.e., 18-07-2022.
10. That, recently there is recovery letter dated 11-06-2022, Annexure - 'C', for recovery of demand for AY 2008-09 Rs. 1,01,16,910/- and for the AY 2013-14 Rs. 77,61,646/-. I came to have a knowledge regarding recovery of demand and immediately I have contacted my Advocate at Ahmedabad to file the appeal to ITAT as early as possible.
11. That I further say that even otherwise, earlier we have discontinued the service of Ahmedabad based Advocate as it was not convenient for me to engaged the lawyer outside Surat and in fact, I have also the local Chartered Accountant to appear before ITAT in group matters namely Shantai Exim Ltd against the order passed by Pr. CIT u/s 263 in the case of the aforesaid company.
12. That, thereafter, it is came to the notice that, in the case of the said company, income tax department has preferred tax appeal to the Gujarat High Court as per Tax Appeal No. 196 of 2022 and matter is fixed on 15-07-2022. In this high court matter of the company for AY 2013-14, advocate from Ahmedabad Mr. Ketan H. Shah is going to appear and therefore, again it was decided that all remaining matter of the family is required to be handled by Senior Advocate from Ahmedabad namely Ketan H. Shah and we have started to make the payment to him for all the group matters pending on 15-07-2022.

13. That, I respectfully pray that since the CIT(A) has passed the appeal order even before the date of adjournment granted by him and further based on the peculiar circumstances narrated hereinabove, I respectfully pray that my appeal to the ITAT may please be heard on merits after condonation of the delay.

Whatever facts stated hereinabove are true and correct to the best of my knowledge and belief.”

3. The Ld. Counsel for the assessee submits that assessee has participated during the appellate proceedings and filed an adjournment application before the Ld. CIT(A). The Ld. Counsel took us through page no.2 of the Ld. CIT(A) order, wherein the assessee also took adjournment against the final show cause notice issued by the ld. CIT(A), however thereafter the Ld. CIT(A) did not issue any notice and the assessee was not aware about the outcome of the appeal. The Ld. Counsel also submitted before us the letter of adjournment filed by the assessee before the Ld. CIT(A), which is reproduced below:

**KETAN H. SHAH, Advocate**  
903, 'Sapphire' Complex, Opp. 'Ratnam' Building,  
Nr. Cargo Motors, C.G. Road,  
Navrangpura, Ahmedabad - 380 009.  
(M) 9825060331, Email: [shh\\_ketan@yahoo.com](mailto:shh_ketan@yahoo.com)

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Date: 23-08-2017

To,  
The Commissioner of Income Tax,  
Appeals - II,  
Room No. 603 - 604,  
Aaykar Bhavan,  
Majura Gate, Surat

Respected Sir,

Sub: Request for adjournment in the case of Murli F. Sawlani, AY **2008-09 and AY 2013-14 in the case of Murli F. Sawlani**, fixed on 23-08-2017

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The aforesaid matter is fixed for today however we request that this matter cannot be decided since earlier matter in reference to deemed dividend issue is pending at your end for want of remand report from the assessing Officer.

Sorry for the inconvenience caused.

Thanking you.

On request made by the AR of the Assessee, hearing is adjourned to...24.09.17...

Yours faithful,  
*Ketan Shah*  
Ketan H. Shah  
Advocate

A 23/08/17  
for CIT (A)-2, Surat

4. The Ld. Counsel for the assessee submits that appeal for AY.2008-09 and 2013-14 were pending before the Ld. CIT(A). Hearings of both the appeals were taken altogether. The assessee filed application for adjournment for both the appeals. For the Ld. CIT(A) granted the date of hearing on 04.09.2017. However, the appeal for AY.2008-09 was migrated to NFAC. The assessee was also under the impression that appeal for AY.2013-14 also might have been migrated NFAC, so the assessee did not try to find out the further progress of appeal for AY.2013-14 and was waiting for the notice of NFAC/Ld. CIT(A). All of a sudden demand notice dated 11.06.2022 was served upon the assessee for AY.2013-14, then the assessee realized appeal for AY.2013-14 which might have been dismissed. On enquiry, it was revealed that appeal for AY.2013-14 was dismissed for *ex parte* order. Soon after coming to know about the dismissal of appeal for AY.2013-14, the assessee filed application in the Department to furnish the copy of order for AY.2013-14 and by going through the contents of impugned order, the assessee keen to know that appeal has been dismissed for non-compliance in an *ex parte* order. Though, there is no delay in filing appeal form date of acknowledge about the dismissal of appeal yet, to avoid the technical objection, the assessee has filed application for condonation of delay of 1825 days that from the date of impugned order till the filing of present appeal. The delay in filing appeal is neither intentional nor deliberate, but due to the fact that the assessee has known all of these is passing order to physical copy of impugned order was not served on the assessee. The assessee has good case on merit and likely to succeed, if one more opportunity on merit is given to the assessee. The AR for the assessee submits that the appeal for AY.2008-09, which certain common facts are still pending before the Ld. NFAC/Ld. CIT(A). The Ld. AR for the assessee submits that there is sufficient cause in condoning the technical delay, yet there is no real delay from the date of acknowledge of the order.

5. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that assessee has not explained the sufficient reasons to condone the delay. The reasons explained by the assessee do not fall in the zone of sufficiency of reasons to condone the delay. The appeal does not mean merely

filing of the appeal but effectively pursuing it. Therefore, Ld. DR stated that such huge delay should not be condoned. To support of his contention, Ld. Sr. DR for the Revenue relied upon the decision of Hon'ble Apex Court, in the case of *Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors.*, in Civil Appeal No.7696 of 2021, dated 16.12.2021

6. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. We note that appeal for AY.2008-09 and 2013-14 were pending adjudication before the Ld. CIT(A), Surat, for both the years. The Ld. CIT(A) granted the next date of hearing for 04.09.2017 which is evident from the application for adjournment, which we have scanned in earlier paras of this order, and we note that both the appeal were adjourned on 04.09.2017, however the order in appeal for AY.2013-14 was passed on 29.08.2017, which is prior to date of hearing given on adjournment application. We further find that the assessee in its application for condonation of delay has categorically contended that no physical copy of impugned order for AY.2013-14 dated 04.09.2017 was served. This fact is not controverted by Ld. CIT(DR) by showing cogent evidence with in fact such order was served as in the corresponding period, the order of Ld. CIT(A) used to be delivered by way of registered post. On considering the overall facts of the case, in our view the assessee was not given reason and fair opportunity, moreover there is no evidence that order of Ld. CIT(A) was communicated which delivered to the assessee or not, therefore we have no reason for not to believe the assertion of assessee, which is supported by affidavit of assessee which we have recorded earlier. We are conscious of the facts that when technical consideration and cause of substantial justice which pitted against each other, the cause of substantial justice should be preferred, as has been laid down by Hon'ble Apex Court in a leading case of *Collector of Land Acquisition vs Mst. Katiji and others*, reported in 167 ITR 471 (SC). So far as reliance on case laws by Ld. Sr. DR for Revenue on *Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors* (supra) is concerned, with utmost regard to the said decision, we find that the fact of the present case is at variance with the fact of said case. In the said case, we find that there is no clear

finding of Hon'ble High Court that there was reasonable and sufficient for condoning the delay. However, in the present case, the assessee has clearly made out a case that he has no knowledge of passing of impugned order, which fact is corroborated by the fact that connected appeal for AY.2008-09 in case of assessee was pending before Ld. CIT(A), which is still pending before NFAC/Ld. CIT(A). Thus, the decision in case of Majji Sannemma (supra), dated 16.12.2021 is not helpful to the Ld. Sr. DR of the Revenue.

In view of the aforesaid factual and legal position, we note that there is no delay in filing the appeal before the Tribunal, if the delay is counted from the date of receipt of order of CIT(A).

7. We note that the words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "**sufficient cause**" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant. The aforesaid view was reiterated in the case of **Balwant Singh vs. Jagdish Singh, (2010) 8SCC 685**, where in the Court held that:

*"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation."*

8. It is true that the legal maxim "*vigilantibus non dormientibus jura subservient*" (law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistakes. As the aphorism 'to err is human' is more a practical notion of human behaviour than an abstract philosophy, the intentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed

by him but to see whether it is possible to entertain his grievance, if it is genuine and sufficient reasons have been explained by assessee [*State of M.P. v. Pradeep Kumar*, (2000) 7 SCC 372, 376-77].

9. We note that there was no deliberateness or negligence or *mala fide* on the part of the assessee. Therefore, the delay in filing this appeal deserve to be condoned and the delay is hereby condoned and we admit the appeal for hearing.

10. On merits, the Ld. Counsel for the assessee submitted that Ld. CIT(A) has passed the *ex parte* order without adjudicating the issues involved in this appeal on the merits, therefore the matter may be remitted back to the file of the Ld. CIT(A) for fresh adjudication on merit.

11. On the other hand, Ld. DR for the Revenue submits that the assessee was given ample opportunity by the lower authorities. The assessee has not availed such opportunity. The assessee deserves no further leniency.

12. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that Ld. CIT(A) has passed the order *ex parte*, without considering the assessment order and the statement of facts. Hence, there is no adjudication on merits, by Ld. CIT(A) therefore order passed by ld CIT(A) is in violation of the provisions of section 250(6) of the Income Tax Act, wherein the Ld. CIT(A) supposed to pass the order in writing on merit and taking into the account, the assessment order and statement of facts filed by the assessee. Therefore, we are of the view that one more opportunity should be given to assessee to plead his case before the Ld. CIT(A).

13. Considering the above facts, we note that assessee could not plead his case successfully before the ld. CIT(A). We also note that Ld. CIT(A) has not passed the order as per the mandate of provisions of section 250(6) of the Act. That is ld. CIT(A) did not pass order on merit based on the material available on record. Hence, we are of the view that one more opportunity should be given to the

assessee to plead his case before the Id. CIT(A). We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

14. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced on 17/05/2023 in the open court.

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

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 17/05/2023

SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat