

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA Nos.793, 797 & 798/PUN/2023

निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Jaikisan Samitrai Ganwani, 102, Mohite Paradise, Manikbaug, Sinhagad Road, Pune 411 051 Maharashtra PAN : AEEPG4254N	Vs.	ITO, Ward-1(3), Pune
Appellant		Respondent

Assessee by None
Revenue by Shri Ajay D. Kulkarni

Date of hearing 27-07-2023
Date of pronouncement 28-07-2023

आदेश / ORDER

PER R.S. SYAL, VP:

These three appeals by the assessee arise out of two separate *ex parte* orders dated 18-09-2017 & 10-12-2019 passed by the CIT(A)-13, Pune 13 & CIT(A)-10, Pune in relation to the assessment years 2009-10 to 2011-12.

2. The extant appeals are time barred by 1245 and 2058 days respectively. The assessee has filed the condonation applications along with affidavit of the Chartered Accountant explaining the reasons which led to delay in presenting the appeals before the Tribunal. In support of delay, the assessee relied on the judgment of

Hon'ble Bombay High Court in the case of Vijay Vishin Meghani in ITA No.493/2015, dt. 19-09-2017 and also the judgment of Hon'ble Supreme Court in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)* dated 08-03-2021 and 421 ITR 314 as part of the delay covers the Covid-19 pandemic period.

3. I have heard the ld. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. As such, I am proceeding to dispose of the appeals *ex parte qua* the assessee.

4. The moot point is as to whether such a long delay deserves condonation. At this stage, it is relevant to note the judgment of the Hon'ble Bombay High Court in *Vijay Vishin Meghani Vs. DCIT & Anr (2017) 398 ITR 250 (Bom)* holding that none should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal. In that case, delay of 2984 days crept in due to improper legal advice. Relying on *Concord of India Ins. Co. Limited VS Nirmala Devi (1979) 118 ITR 507 (SC)*, the Hon'ble jurisdictional High Court condoned the delay.

5. In yet another case in *Anil Kumar Nehru and Another vs. ACIT (2017) 98 CCH 0469 BomHC*, there was a delay of 1662 days in

filing the appeal. Such a delay was not condoned by the Hon'ble High Court. In further appeal, condoning the delay, the Hon'ble Supreme Court in *Anil Kumar Nehru vs. ACIT (2018) 103 CCH 0231 ISCC*, held that : 'It is a matter of record that on the identical issue raised by the appellant in respect of earlier assessment, the appeal is pending before the High Court. In these circumstances, the High Court should not have taken such a technical view of dismissing the appeal in the instant case on the ground of delay, *when it has to decide the question of law between the parties in any case* in respect of earlier assessment year. For this reason we set aside the order of the High Court; condone the delay for filing the appeal and direct to decide the appeal on merits.'

6. In view of the aforementioned judgments, the delay in filing the appeals is condoned and the appeals are admitted for disposal on merits.

A.Y. 2009-10 & A.Y. 2010-11:

7. It is seen that the assessments in the captioned assessment years were framed u/s.143(3) r.w.s.147 of the Act determining total income at Rs.9,66,698/- as against declared income of Rs.3,40,410/- and at Rs.18,61,898/- as against the declared income of Rs.4,65,650/. The Id. CIT(A), in para 1.6 of the impugned order, noted as under :

“I have considered the facts of the case. As stated, before me, the Appellant has not substantiated his Grounds of Appeal raised with his arguments and supporting evidence. Therefore, I confirm the addition of the gross profit of Rs.9,66,698/- for the A.Y. 2009-10 and of Rs.18,61,898/- for the A.Y. 2010-11 made by the learned AO.”

He thus eventually dismissed the appeals of the assessee for the years under consideration *ex parte* qua the assessee.

A.Y. 2011-12 :

8. Similar position prevailed for this assessment year as well. The AO completed the assessment u/s.143(3) r.w.s.147 of the Act determining total income at Rs.36,21,467/- as against Rs.6,76,720/- returned by the assessee.. The ld. CIT(A) passed the *ex parte* order in the absence of the assessee.

9. After hearing the ld. DR and considering the entirety of facts and circumstances of the extant assessment years under consideration, I am of the opinion that it would be just and fair if the impugned orders are set-aside and the matters are remitted to the file of the ld. CIT(A) with a direction to decide the appeals afresh as per law after allowing a reasonable opportunity of hearing to the assessee. I order accordingly. Needless to say, the assessee will be at liberty to lead any fresh evidences in support of its case.

10. In the result, the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 28th July, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 28th July, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-07-2023	Sr.PS
2.	Draft placed before author	28-07-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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