

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1503/Mum/2023  
(A.Y. 2011-12)**

Shilpkars Clothing Company, 702, RNA Kutir, 14 <sup>th</sup> Road, Chembur, Mumbai – 400071	Vs.	ACIT-22(2), Room No. 417, 4 <sup>th</sup> Floor, Tower No. 6, Vashi Railway Station Building, Complex, Vashi Navi Mumbai - 400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABLFS1537J		
Appellant	..	Respondent

Appellant by :	Dharmesh Shah & Jigna Jain
Respondent by :	Suresh D. Gaikwad

Date of Hearing	13.07.2023
Date of Pronouncement	26.07.2023

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-49, Mumbai, dated 21.03.2022 for A.Y. 2011-12. The assessee has raised the following grounds before us: (Grounds)

- “1. The Ld. CIT(A) erred in law and in facts in not appreciating that the reopening of assessment was bad in law.
2. The Ld. CIT(A) has erred in law and in facts in confirming the addition of alleged bogus purchases by working of peak credit amounting to Rs.1,17,10,542/-
3. The Ld. CIT(A) has erred in law and in facts in not granting adequate opportunity to the appellant and dismissing the appeal.
4. The Appellant craves leaves to add, amend, alter, delete all or any of the forgoing grounds of appeal.”

2. There was a delay in filing this appeal by 347 days. To condone the delay in filing the appeal the assessee has filed petition dated 11.07.2023 along with affidavit. In the petition the assessee submitted that delay in filing the given appeal was occurred on account of the fact that partner of the assessee firm Shri Mehul Parikh was occupied with the legal and criminal matters initiated against him by M/s RNA Cargo Pvt. Ltd. and M/s G.A. Builders Pvt. Ltd. as a result of which he could not devote his time and attention for filing the impugned appeal. The aforesaid parties have filed the FIR against the partner on 11.07.2021. Therefore, Shri Mehul Parikh filed application for anticipatory bail before the Session Court Bombay on 23.07.2021 however, vide order dated 21.10.2021 the session court has denied the anticipatory bail to the partner of the firm Shri Mehul Parikh. Therefore, he filed anticipatory bail application before the hon'ble Bombay High Court which was also rejected vide order dated 16.11.2021 thereafter Mr. Mehul Parikh had surrendered before the Additional Metropolitan Magistrate Kurla Mumbai on 11.04.2022. In support of their contention the assessee has placed in the paper book the following relevant evidences:

<b>INDEX TO PAPER BOOK FOR CONDONATION OF DELAY</b>		
<b>Sr. No.</b>	<b>Particulars</b>	<b>Page No.</b>
1.	Petition for condonation of delay in filing the appeal	1-6
2.	Affidavit of Mr. Mehul Parekh	7-10
3.	FIR filed against Mr. Mehul Parekh on 11.06.2021	11-19
4.	Order of the Hon'ble Sessions Court in Anticipatory Bail Application No. 1628 of 2021 in the case of Mr. Mehul Parekh dated 21.10.2021	20-61
5.	Order of the Hon'ble Bombay High Court in Anticipatory Bail Application No. 2671 of 2021 in the case of Mr. Mehul Parekh dated 16.11.2021	62-66
6.	Order of the Hon'ble Supreme Court in SLP (Cr.) No. 92/2022 in the case of Mr. Mehul Parekh dated 07.01.2022	67-69
7.	Application filed by Mr. Mehul Parekh before Addl. CCM Kurla on 11.04.2022	70-81
8.	Order of the Addl. CCM Kurla in Bail Application No. 933/BA/2022 in the case of Mr. Mehul Parekh dated 11.04.2022	82-86
9.	Order of the Addl. CCM Kurla in C.R. No. 432/2021 in the case of Mr. Mehul Parekh dated 18.04.2022	87-89
10.	Order of the Addl. CCM Kurla in Bail Application No. 933/BA/2022 in the case of Mr. Mehul Parekh dated 21.04.2022	90-95
11.	Order of the Addl. CCM Kurla in Miscellaneous Application No. 859 of 2022 in the case of Mr. Mehul Parekh dated 19.05.2022	96-114
12.	Order of the Addl. CCM, Kurla in C.C. No. 30/SW/2022 in the case of Mr. Mehul Parekh dated 30.05.2022	115-116
13.	FIR filed by Mr. Mehul Parekh against RNA Corp Pvt. Ltd. and its directors on 04.06.2022	117-124

14.	Letter dated 10.06.2022 sent by Mr. Mehul Parekh to the Home Minister of Maharashtra, Director General of Police of Maharashtra and Commissioner of Police, Mumbai	125-129
15.	FIRs filed by RNA Corp Pvt. Ltd. against Mr. Mehul Parekh on various dates	130-157
16.	Letter dated 24.08.2022 containing complaint filed by Mr. Mehul Parekh before the Enforcement Directorate (ED) against RNA Corp Pvt. Ltd.	158-159
17.	Order of the Addl. CCM, Kurla relaxing the bail conditions imposed on Mr. Mehul Parekh dated 20.10.2022	160-161
18.	Statements of Mr. Mehul Parekh dated 04.02.2023 and 06.02.2023 recorded by Asst. Police Officer, Chembur Police Station, Thane	162-192

Looking to the above facts and material placed in the paper book we consider that there is a reasonable cause for delay in filing the impugned appeal, therefore, we condone the delay in filing this appeal.

3. Fact in brief is that return of income declaring total income of Rs.504,33,592/- was filed on 27.04.2022. The return was processed u/s 143(1) of the Act. Subsequently, the case was reopened by issuing of notice u/s 148 of the Act on 19.02.2023. The assessee firm is a partnership firm engaged in the business of retail trade of readymade garments. There was a survey action u/s 133A of the Act on 19.12.2022 at various business premises of the assessee firm. At the time of survey it was noticed that certain bills from various parties were not accompanied by delivery challans, transportation bills etc. On further verification it was noticed that assessee firm had made purchases from many of those parties which was declared as hawala operators by the sales tax department, Maharashtra State. The assessing officer has also listed such parties at page no. 2 & 3 of the assessment order. The assessing officer further stated that assessee has neither produced these parties nor filed delivery challans. Therefore, for want of verification the assessing officer has treated the purchases made from the hawala parties listed by the Maharashtra Sale Tax Department as bogus and treated the combined peak of the credit standing in the name

of these bogus parties as unexplained expenditure u/s 69C of the Act. Therefore, total amount of Rs.117, 10,542/- was treated as undisclosed investment u/s 69C of the Act.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) vide order u/s 250 of the Act dated 21.03.2022 has dismissed the appeal of the assessee on the ground that assessee has not made compliance during the course of appellate proceedings to the notices issued by the ld. CIT(A).

5. During the course of appellate proceedings before us the ld. Counsel submitted that assessee could not make compliance before the ld. CIT(A) because of criminal proceedings filed against the assessee and assessee was not granted anticipatory bail as reported in the affidavit filed for condonation of delay in filing the impugned appeal. Therefore, he submitted that more opportunity should be given to the assessee for deciding their case on merit.

On the other hand, the ld. DR supported the order of lower authorities.

6. Heard both the sides and perused the material on record. The assessee firm is a partnership firm and Shri Mehul M. Parikh and Smt. Geeta M. Parikh were the two partners of the firm. It is undisputed fact that main partners of the assessee firm Shri Mehul M. Parikh has surrendered before the Additional Metropolitan Magistrate on 11.04.2022 and his anticipatory bail application was rejected by the Session Court and Hon'ble Bombay High Court as evident from the copies of various orders as elaborated supra in this order while considering the petition for condoning the delay in filing the impugned appeal. After considering the such extraordinary circumstances which were beyond the control of the assessee we consider that there is a bonafide reason as discussed supra because of which the required

compliance could not be made before the Id. CIT(A). Therefore, in the interest of justice to decide the case on merit, we restore this case to the file of the Id. CIT(A) for adjudicating on merit as prescribed u/s 250(6) of the Act after affording adequate opportunity to the assessee. Therefore, ground of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 26.07.2023

Sd/-

(Aby T Varkey)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 26.07.2023

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**