

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.54/Rjt/2022  
(Assessment Year: 2013-14)

Chetan Kanji Katariya, Nr. Pinjora Peer, B/h. Referral Hospital, Anjar-Kutch-370110 [PAN No.ALNPK6008Q]	Vs.	Income Tax Officer, Ward-1, Gandhidham
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	None
<b>Respondent by:</b>	Shri Sanjeev Ranjan, Sr. DR
<b>Date of Hearing</b>	25.07.2023
<b>Date of Pronouncement</b>	04.08.2023

ORDER

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals)-2 (in short "Ld. CIT(A)"), Rajkot in Appeal No. CIT(A)-2/Rjt/10221/2018-19 vide order dated 10.04.2019 passed for Assessment Year 2013-14.

2. The assessee has taken the following grounds of appeals:-

*"1. The assessment order passed u/s 143(3) of IT Act by the Assessing Officer and confirmed by the first appellate authority u/s 250 is bad in law and deserved to be uncalled for.*

*2. The assessing officer as well as first appellate authority has erred in law and on facts in making and confirming the addition of Rs.*

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*5,87,178/- by disallowing the interest payment to NBFCs. The same deserves to be deleted.*

*3. The assessing officer as well as first appellate authority has erred in law and on facts in making and confirming the addition of Rs. 1,00,000/- on account of cash expenses. The same deserves to be deleted.*

*4. The appellant craves to reserve his right to add, alter, amend, or delete any ground of appeal during the course of hearing.”*

3. The brief facts of the case are that during the course of assessment, the Assessing Officer observed that the assessee had paid interest to M/s. SRE Equipment and other NBFCs amounting to Rs. 5,87,178/- on which no TDS was deducted. Accordingly, the Assessing Officer made disallowance of Rs. 5,87,178/- as per provisions of Section 40(a)(ia) of the Act. Further, the Assessing Officer also observed that the assessee had made substantial cash payments to labourers towards site expenses. However, on verification of bills, vouchers etc. the Assessing Officer observed that certain payments were made in cash below Rs. 20,000/- and some of the payments were supported only by self-made vouchers. Accordingly, considering the quantum of cash involved, the Assessing Officer made a lumpsum disallowance of Rs. 1,00,000/- on accounts of cash expenses.

4. In appeal Ld. CIT(A) gave as many as seven opportunities of hearing to the assessee by fixing various dates of hearing. However, neither the assessee appeared nor was any request for adjournment filed on behalf of

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the assessee. Accordingly, in absence of any response from the assessee, the Ld. CIT(A) confirmed the additions with the following observations:-

*“5. In view of above, it is seen that there is not response from the assessee despite service of notice through AO. Therefore the appeal is liable to be dismissed for non-prosecution. I find support from the following decisions:-*

*(i) In the case of CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 & 478) wherein their Lordships have held that “the appeal does not mean merely filing of appeal but effectively pursuing it.”*

*(ii) In the case of Estate of Late Tukojirao Holker Vs. CWT 223 IR 480 (MP) while missing the reference made at the instance of assessee in default made following observations in their order.*

*“If the partly at whose instance the reference is made falls to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference.*

*(iii) In the case of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del). The appeal filed by the revenue before the Tribunal which was fixed hearing but on the date of hearing nobody represented the revenue applicant, nor any communication for adjournment received. There was no communication or information as to why revenue choose to remain absent on that date. The Tribunal on*

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*the basis of inherent power treated the appeal filed by the revenue as un-admitted in view Rule 19 of the Appellate Tribunal Rules, 1963.*

*Coming to the merits of addition I find that the additions u/s 40(a)(ia) and ad-hoc disallowance out of expenses made in cash are justified.*

*Thus on the merits also I find that the contested additions are justified. The additions are therefore confirmed on merits as well.*

4. *For statistical purpose, the appeal of the assessee is to be treated as **dismissed.***”

5. The assessee is in appeal before us against the aforesaid addition confirmed by the Ld. CIT(A). At the outset, we observe that the appeal is time barred by 976 days. However, we observe that the assessee has not submitted any Affidavit in support of the delay in filing of the present appeal. Further, the assessee has filed a letter on plain paper dated 11.03.2022, on which it was submitted that the appeal was to be filed by 10.07.2019, but the same could not be filed due to salary dispute with the accountant. Accordingly, it was submitted that there was a delay in filing of appeal which may kindly be condoned.

6. On going through the facts of the case, we observe that there has been consistent non-cooperation on part of the assessee before CIT(A) wherein no appearance was made despite several opportunities. Further, even before us, even though assessee has been given a large number of opportunities to appear before us, however, none has appeared on behalf of

the assessee. Accordingly, looking into the instant facts, we are not inclined to condone the delay in filing of the present appeal of 976 days, which is not supported by any Affidavit and moreover, there seems to be no justifiable reasons for the delay in filing of the present appeal.

7. In the case of **Mani Mandir Sewa Nvas Samiti Ramghat Ayodhya v. CIT [2020] 119 taxmann.com 383 (SC)**, the Hon'ble Supreme Court held that where assessee sought for condonation of delay of four and half years in filing appeal against order of Tribunal on ground of ailment of manager but High Court declined to condone delay on ground that there was nothing on record to show that manager was suffering from ailments which did not permit him to take initiative for filing of appeal, SLP against said decision was to be dismissed. In the case of **Amit Cotton Industries [2022] 136 taxmann.com 328 (SC)**, the Hon'ble Supreme Court held that delay of 520 days in filing special leave petition cannot be condoned without satisfactory explanation and hence, dismissed. In the case of **Tractors & Farm Equipments Ltd.[2007] 104 ITD 149 (Chennai) (TM)**, the ITAT held that where assessee justified delay of 310 days in filing appeal before Tribunal by stating that Commissioner (Appeals)'s **order was misplaced and forgotten and when same was found while sorting out unwanted papers**, steps were taken for preparation of appeal, the delay in filing of appeal before Tribunal could not be condoned as same was due to negligence and inaction on part of assessee and assessee could have very well avoided delay by exercise of due care and attention. While rejecting the assessee's application for condonation of delay, the Tribunal made the following observations:

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*“The delay cannot be condoned simply because the appellant’s case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence, whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The cause for the delay in filing the appeal, which by due care and attention, could have been avoided, cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, or inaction, or want of bona fides can be imputed to the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands.”*

*In the instant case, the assessee justified the delay only with reference to the affidavit of its director. In the said affidavit it was stated that the Commissioner (Appeal)’s order was misplaced and forgotten. It was found while sorting out the unwanted papers and thereafter steps were taken for the preparation of the appeal and consequently the delay was caused. That clearly showed that the delay was due to the negligence and inaction on the part of the assessee. The assessee could have very well avoided the delay by the exercise of due care and attention. There existed no sufficient and good reason for the delay of 310 days. Therefore, reasonings adduced by the Accountant Member were to be concurred with. [Para 8]”*

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8. The ITAT Hyderabad in the case of **T. Kishan [2012] 23 taxmann.com 383 (Hyderabad)** held that in condoning delay in filing appeal, it must be proved beyond shadow of doubt that assessee was diligent and was not guilty of negligence whatsoever.

9. In the present case, we observe that despite several opportunities, the assessee did not cause appearance before us to argue the case on merits. Further, the appeal of the assessee is time barred by 976 days and there is no Affidavit in support of such delay. On perusal of the application for condonation of delay which has been submitted on a plain paper without any Affidavit, we observe that assessee has not been able to give any substantive or cogent reason for the inordinate delay of 976 days in filing of the present appeal. Accordingly, we are not inclined to condone the delay in filing of the present appeal and the appeal of the assessee is dismissed.

10. In the result, appeal of the assessee is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>04/08/2023</b>
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**Sd/-**

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 04/08/2023

TANMAY, Sr. PS

**TRUE COPY**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

**Sd/-**

**(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot