

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, “**SMC**” BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
आ.अ.सं./ITA Nos.394 & 388/SRT/2023 (AY 2011-12)
(Hearing in Physical Court)

Gauri Dhirenkumar Shah 1, Brahamin Faliya, Ladeshwar, Nr. Swaminarayan Temple, Bharuch-392011 PAN No: AHNPS 2989 Q	Vs	Income Tax Officer, Ward-1(4), Bharuch
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Ms. Nanda K Chauhan, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	01.06.2023 & 31.05.2023
सुनवाई की तारीख/Date of hearing	16.08.2023
उद्घोषणा की तारीख/Date of pronouncement	18.08.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee is directed against the separate orders of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] both dated 21.03.2023 for assessment year 2011-12, in ITA No.394/SRT/2023 assessee has challenged the addition made in quantum assessment, however, in ITA No.388/SRT/2023 the assessee has challenged the confirmation of penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 16.05.2019. Since the facts in both the appeals are common, relate to same assessment year (2011-12), therefore, both the appeals were clubbed, heard together and are decided by common order to avoid the conflicting decisions. For appreciation of facts, the

facts in quantum assessment, in **ITA No.394/SRT/2023** is treated as “lead” case. The assessee has raised the following ground of appeal:-

“1.The order passed u/s 147 r.w.s. 143(3) is bad in law, illegal and required to be quashed. It be so held now.

2.The learned A.O has erred in law and on facts in making disallowance of a sum of Rs.1,56,890/- claimed u/s 57 of the Act, this disallowance by AO is patently bad, arbitrary and unlawful that ought to have been allowed in full as claimed.

3. The learned AO has erred in law and on facts in making disallowance of a sum of Rs.1,00,000/- claimed under Chapter VIA, this disallowance by AO is patently bad, arbitrary and unlawful that ought to have been allowed in full as claimed.

4. Levy of interest u/s 234A/B/C of the Act is not justified.

5. The learned AO has erred in law and on facts in levying penalty under Sec.271(1)(c) of the Act.”

2. Perusal of record shows that that there is delay of eight days in filing present appeal before Tribunal. The impugned order was passed by Ld. CIT(A) on 21.03.2023 and present appeal filed on 01.06.2023, the Registry pointed out the delay of eight days in filing appeal before Tribunal. The assessee has filed application for condonation of delay of eight days in filing the appeal. The Ld. Authorized Representative (Ld. AR) for the assessee submits that assessee is widow, her husband died, due to sudden heart attack during assessment proceedings. The copy of death certificate is placed on record. The Ld. AR for the assessee submits that assessee was not conversant with the technicalities of filing appeal before different forums, the assessee was solely depended upon her deceased husband and due her oversight the appeal could not be filed in time, however, appeal fee was paid on

25.05.2023. The Ld. AR for the assessee submits that there was no *mala fide* intention or deliberate delay in filing appeal before Tribunal. The assessee has a good case on merit and would suffer prejudice if the delay in filing of assessee's appeal is not condoned. The Ld. AR for the assessee submits that delay in filing the appeal before the Tribunal may be condoned and appeal of assessee be heard on merit. The Ld. AR for the assessee submits that even lower authorities have not given fair and reasonable opportunity, the Ld. CIT(A) dismissed the appeal of assessee by taking view that no proper compliance was made by assessee despite service of notice of hearing issued.

3. On the other hand, learned departmental representative (Ld. Sr-DR) for the Revenue submits that though the assessee has not explained the delay properly and she simply took a plea that assessee is not conversant with the procedure, which cannot be a proper explanation for condoning such delay. The Ld DR for revenue submits that assessee even not appeared before the assessing officer and not filed her submissions before Ld CIT(A), which shown her conduct of non-cooperation and does not deserve leniency.
4. I have considered the submission of both the parties and perused on the plea of condonation of delay. I find that there is small delay of eight days in filing the appeal, thus, keeping in view the submission of Ld. AR for the assessee that delay in filing appeal is neither intentional nor deliberate, therefore, keeping in view overall facts and circumstances of the case, the delay of eight days is condoned. Now advertent the merit of the case.

5. On merit of the case, the Ld. AR for the assessee submits that lower authorities have not given fair, reasonable and proper opportunities to assessee. The husband of assessee died during assessment proceedings i.e., on 16.06.2018 and assessee was under mental stress and trauma so assessee could not make proper compliance against the notice issued by Assessing Officer. On further suffering pain and agony, on account of disallowance of Rs.1,56,890/- under section 57 of the Act and deduction of Rs.1,00,000/- under Chapter VIA of the Act for non-compliance, the assessee filed appeal before Ld. CIT(A). The assessee engaged services of consultant, who has given his/her telephone number and e-mail while filing details in Form-35. Notices of hearing of appeal if any may have received by her consultant, however, the assessee was not informed, so case remained unrepresented, which resulted in dismissal of appeal by Ld. CIT(A). The Ld. AR for the assessee submits that assessee has a good case and is likely to succeed, if the assessee is given one more opportunity. And she undertakes to make compliance, Ld. AR for the assessee on behalf of assessee and to be more vigilant in future and not to make any default. The Ld. AR for the assessee submits that present appeal may be adjudicated by allowing her to file necessary evidence to substantiate the disallowance under section 57 of the Act as well as deduction under Chapter-VIA of the Act.
6. On the other hand, Ld. Sr-DR for the Revenue submits that assessee has neither made proper compliance before Assessing Officer nor before Ld. CIT(A) and the assessee cannot take a plea at this stage for

allowing to file evidence in defiance of IT Rules, 1962 or the Income Tax (Appellate Tribunal) Rule, 1963 with regard to filing of evidence which was not filed before lower authorities. The Ld. Sr-DR for the revenue submits that in case the Bench is of the view that assessee require any opportunity to substantiate her claim, the matter may be restored back to the file of Assessing Officer to adjudicate the issues afresh in accordance with law, with the direction to the assessee to be more vigilant.

7. I have considered the submission of both the parties and I find that Ld. AR for the assessee has shown reasonable and plausible explanation for non-compliance before lower authorities, therefore, I am of the considered view that the assessee deserves one more opportunity to explain her case before Assessing Officer. The assessee as well as his representative is also directed to be more vigilant in future and not to cause further delay and seek no adjournment without any valid reason and to furnish all information, details and evidences to substantiate her claims, as soon as possible, without any further delay, before the Assessing Officer. With these directions, the issues raised in the grounds of appeal are restored back to the file of Assessing Officer to adjudicate / pass a speaking order in accordance with law. Needless to direct before passing assessment order, the Assessing Officer shall grant fair and reasonable opportunity to assessee and assessee is also directed to be more vigilant and to make timely compliance without any delay. Since the matter relates to assessment year 2011-12, therefore Assessing Officer is to expected take the matter

on priority basis. In the result, the grounds of appeal are allowed for statistical purposes.

8. In the result, assessee's appeal is allowed for statistical purposes.

Now coming to ITA No.388/SRT/2023

9. I find that there is similar delay of seven days in filing appeal and considering the similar submission of Id AR for the assessee, the delay of seven days in filing this appeal is also condoned.

10. Now adverting the merit of the case. Considering the fact that additions made in the quantum assessment has been restored back to the file of Assessing Officer, therefore at this stage, the penalty levied by Assessing Officer under section 271(1)(c) vide order dated 16.05.2019 will not survive. Hence, the appeal of assessee is allowed, however, the Assessing Officer shall be at liberty to initiate fresh action, if so, require at the time of passing the fresh assessment order as per direction of this Tribunal.

11. In the result, assessee's appeal is allowed

12. A copy of this order be placed in the respective case file(s).

Order pronounced in open court on 18/08/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 18/08/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT, Surat