

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.390/SRT/2022

Assessment Year: (2012-13)

(Physical Hearing)

Kalidas Kurjibhai Bavariya, 5/B, Tulsi Park, Gandhi Road, Bardoli, Surat - 394601	Vs.	The ITO, Ward-2, Bardoli
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AYNPB4062A		
(Appellant)		(Respondent)

Appellant by	Shri Bipin Jariwala, Advocate
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	21/09/2023
Date of Pronouncement	29/09/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 15.11.2021, which in turn arises out of an assessment order passed by Assessing Officer u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 21.10.2019.

2. At the outset, Ld. Counsel for the assessee stated that appeal filed by the assessee is barred by limitation by three hundred ninety three (393) days. The Ld. Counsel argued that one hundred five (105) days are covered by Covid-19 period wherein the Hon'ble Supreme Court *vide* its Suo Motu Writ Petition No.21 of 2022, stated that the period from 15.03.2020 to till 28.02.2022 shall also stand excluded in computing the periods prescribed under sections 23(4) and 29A of the

Arbitration and Conciliation Act, 1996. The finding of the Hon'ble Supreme Court is reproduced below:

“IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996. Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

3. Therefore, Ld. Counsel contended that one hundred five (105) days of delay has been explained by the assessee by submitting the order of the Hon'ble Supreme Court wherein the time period was extended due to Covid-19, therefore one hundred five (105) days have been treated to be explained. The Ld. Counsel also argued that after passing the order by ld. CIT(A), sixty (60) days' time is available to file appeal before the Tribunal, so sixty (60) days' time should be excluded. Having excluded one hundred five (105) days and sixty (60) days, the effective delay in filling the appeal comes to two hundred twenty (220) days only.

4. In order to explain the balance delay of two hundred twenty (220) days, the Ld. Counsel submitted that first reason of delay is that during the appellate proceedings, the assessee could not receive the notice for hearing and also did not receive the order of the ld. CIT(A) on time. The Ld. Counsel has explained the second reason of delay stating that assessee was feeling severe illness; therefore, he could not take decision to file the appeal on time. To prove this fact, the assessee filed before the Bench the medical bills and medical prescription by the Doctor and various reports of the assessee. Therefore, Ld. Counsel contended that due to severe illness the assessee was in the condition

of hyper tension and hence did not take decision to file the appeal before the Tribunal and therefore delay has occurred.

5. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue submitted that assessee has failed to explain the delay with sufficient reasons; therefore delay should not be condoned. The ld. DR also relied on the judgment of Hon'ble Supreme Court in the case of *Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors., in Civil Appeal No. 7696 of 2021*, order dated 16.12.2021.

6. I have heard both the parties on this preliminary issue. The part delay explained by the assessee is tabulated below:

KALIDAS KURJIBHAI BAVARIYA AY 2012-13 - ITA 390/SRT/2022				
			DATE	
<i>A</i>	<i>DATE OF ORDER AND RECD.</i>		15/11/2021	
<i>C</i>	<i>APPEAL FILED ON</i>		13/12/2022	
<i>D</i>	<i>Hon. Supreme Court order on sue moto petition for limitation period extension till 28.02.2022 due to Covid-19</i>		28/02/2022	
			DAYS	
<i>C-A</i>	<i>TOTAL DAYS DELAY</i>		393	<i>DAYS</i>
<i>D-A</i>	<i>Days covered in Limitation period extension due to covid-19</i>	<i>(-)</i>	105	<i>DAYS</i>
	<i>APPEAL FILED WITHIN</i>	<i>(-)</i>	60	<i>DAYS</i>
	ACTUAL DELAY IN FILING APPEAL	TOTAL	228	DAYS

7. From the above table, it is evidently clear that the effective delay in filling the appeal is only two hundred twenty (220) days. For this effective delay, the Ld. Counsel for the assessee submitted that assessee was feeling severe illness and for that ld. Counsel produced before us medical bills, prescriptions and various reports such as blood sugar, bold glucose analysis and other reports of Doctors. I note that assessee is a 75 years old farmer and uneducated person therefore does not have knowledge of Internet/computer. Further, assessee has heavy diabetic problem and other allied health problem and was unaware

about the filing of appeal before the Tribunal (ITAT). It was stated by Id. Counsel that due to health problems, assessee shifted to Surat for living with his Son, namely Shri Manish Kalidas Patel at A-504, Nilkanth Avenue, Pal Water works, Near Pal Talav, Surat-395009. So, assessee could not receive any physical correspondence from the Income Tax Department. I note that reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Therefore, the delay in filing this appeal deserves to be condoned and the delay is hereby condoned.

8. On merit, Id. Counsel for the assessee contended that assessee could not receive the notice for hearing during the appellate proceedings. However, against the few notices issued by the Id. CIT(A), the assessee filed adjournment application and also filed request letter to remove the deficiency in filing the appeal before the Id. CIT(A). Therefore, Ld. Counsel contended that although the assessee has participated in appellate proceedings, but Id. CIT(A) has passed an *ex parte* order. The Ld. Counsel also contended that order passed by the Assessing Officer is under section 144 r.w.s. 147 of the Act. Therefore, Assessing Officer has not examined the basic facts of the assessee; therefore Ld. Counsel contended that one more opportunity should be given to the assessee to plead his case before Assessing Officer.

9. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. I note that assessee could not plead his case successfully before the Id. CIT(A). I 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, Id. CIT(A) did not pass

order on merit based on the submission of the assessee, which would have been submitted by him provided Id. CIT(A) had granted the adjournment to the assessee. Hence, I am of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. I 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, I restore the matter back to the file of Assessing Officer 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, I 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 Assessing Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 29/09/2023 in the open court.

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

सूत /Surat

दिनांक/ Date: 29/09/2023

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat