

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 479, 480, 481 & 482/Srt/2023  
(Assessment Years 2011-12 to 2014-15)

*(Hybrid hearing)*

Ramesh P. Mehta HUF, 104, Raj Anand Apartment, Faliyu, Katargam, Surat-393004. <b>PAN No. AAKHR 6564 G</b>	Vs.	I.T.O., Ward 3(2)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Chaitali Shah, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeals	14/07/2023
Date of hearing	26/10/2023
Date of pronouncement	26/10/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This group of four appeals by the assessee are directed against the separate orders of learned National Faceless Appeal Centre, Delhi (in Short NFAC)/learned Commissioner of Income Tax (in short, the Id. CIT(A) all dated 22/02/2023 for the Assessment Year (AY) 2011-12 to 2014-15 respectively. In all these appeals, the assessee has raised similar grounds of appeal. Certain facts in all these years are common, therefore, with the consent of parties all these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the appeal for the A.Y.

2011-12 in ITA No. 470/Srt/2023 is treated as a "lead case". In this appeal, the assessee has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex parte order without giving reasonable and sufficient opportunity of being heard.*
  - 2. On the facts and in the circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in reopening assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.*
  - 3. On the facts and in the circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making an addition of Rs. 19,38,241/- on account of estimated profits being 5% of alleged unexplained credits amounting to Rs. 3,87,64,829/-.*
  - 4. It is therefore prayed that the above addition made by the assessing officer and confirmed by CIT(A) may please be deleted.*
  - 5. The appellant craves leave to add or alter or delete any of the grounds of appeal at the time of hearing before Your Honour."*
2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that there is a delay of 82 days in filing appeal before the Tribunal. The Id. AR of the assessee submits that she has already filed application for condonation of delay in all appeals. The Id. AR of the assessee submits that the delay in filing appeal is neither intentional nor deliberate. The Id. AR of the assessee submits that while filing appeal before the Id. CIT(A), e-mail address of Chartered Accountant in the name of [cabirjjushah@gmail.com](mailto:cabirjjushah@gmail.com) , was given. They sought adjournment on two occasions. The Id. CIT(A) ultimately passed the ex parte order by taking a view that no compliance was made. The assessee has not received the order of Id. CIT(A) as the same may have been sent on the e-mail address of his Chartered Accountant. When his newly engaged C.A. Shri Atit Shah who was assigned the case of

representing before the Id. CIT(A), checked the portal of department in first week of August 2023 and found that ex parte order has already been passed on 22 February 2023. On finding of ex parte order passed by the Id. CIT(A), the present appeal was filed immediately by giving new e-mail address in Form 36. Non-filing of appeal before the Tribunal is neither intentional nor deliberate. The assessee has good case on merit and is likely to succeed if one more opportunity is given to the assessee. The Id. AR of the assessee submits that the assessee is not going to be benefitted in filing the appeal belatedly rather there is a chance that delay may not be condoned.

3. On merit of the case, the Id. AR of the assessee submits that the Assessing Officer made addition on account of cash credit in the bank account of the assessee by treating the entire transaction / all entry in bank as turnover of assessee and estimated 5% of profit, by granting set off of turnover declared by the assessee. The Assessing Officer made addition for want of reply. The Id. CIT(A) confirmed the order of Assessing Officer in ex parte order. The Id. AR of the assessee submits that the addition was made by the Assessing Officer for want of proper representation/submission which was confirmed by the Id. CIT(A). the additions made in the assessment ins on higher side. The Id. AR of the assessee submits that the assessee may be allowed one more opportunity to explain the fact and the nature of transaction in his bank account and matter may be restored to the file of Id. CIT(A) or to

assessing officer with the liberty to the assessee to file required evidence to substantiate the credit in his bank account.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that in the application for condonation of delay, the assessee has not disclosed reasonable and plausible cause for condoning the delay. The assessee has given a very vague explanation. There is no evidence of such explanation by assessee. The assessee has made a self-serving statement that the delay is not intentional. The Id. Sr.DR for the revenue submits that the delay should not be condoned as the assessee has not disclosed reasonable and plausible cause. To support his submission, the Id. Sr. DR for the revenue has relied upon the decision of Hon'ble Apex Court in Civil Appeal No.7696 of 2021 in the case of Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & Ors.
5. On merit, the Id. Sr. DR for the revenue supported the orders of lower authorities and would that the Assessing Officer made a reasonable estimation of only 5% of the credit entries in the bank account which was not included in the total turnover of the assessee.
1. I have considered the submissions of both the parties and perused the record carefully. On the plea of delay, I find that the Id. AR of the assessee has vehemently submitted that there was no intentional or deliberate delay rather the delay is for the reasons that the assessee has not received impugned order on time rather came to know when his

new Chartered Accountant who was assigned the work to represent the case before Id. CIT(A), checked on the portal of revenue in first week of August 2023 that order has already been passed by the Id. CIT(A). The Id. AR of the assessee also submitted that the assessee has goods case on merit. On considering the submission of assessee and facts of the case, I am of the view that the delay in filing appeal tribunal is not deliberate or intentional or gross negligence on part of assessee, therefore, considering the principle that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred, therefore, delay in filing appeal before the Id. CIT(A) is condoned.

6. So far as objection of Id. Sr.DR for the revenue and reliance on decision of Hon'ble Apex Court in Civil Appeal No.7696 of 2021 in the case of Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & Ors. with utmost regard to the said decision, I find that facts of the present appeal are at variance. With utmost regard the ratio of the said decision, I find that in that case, the High Court has not observed that there was any sufficient cause explaining the huge delay of 1011 days was made out. However, in the present appeal there is delay of about 82 days and the assessee has shown sufficient cause, that they were not aware of passing order by Id CIT(A) and realised about the passing of the order when checked the portal of revenue in first week of August 2023. Thus, I find that the explanation given by assessee for condonation of delay is reasonable

one. Hence, the delay in filing appeal is condoned. Now adverting to the merit of the case.

7. On merit, I find that the Assessing Officer made addition on account of entire credit in the bank account of the assessee by treating it turnover of assessee and estimated 5% of profit by granting set off of turnover already declared by the assessee. The Assessing Officer made addition for want of reply. I also find that the Id. CIT(A) confirmed the order of Assessing Officer in ex parte order. The addition in the assessment was made in absence of any reply by assessee. The Id. CIT(A) is also confirmed the order of Assessing Officer in an ex parte proceedings, therefore, keeping in view the principle of natural justice that the assessee deserve one more opportunity to contest his case on merit, therefore, the grounds of appeal raised by the assessee is restored back to the file of Assessing officer to decide the issue afresh in accordance with law. The assessee is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all the details and his submissions and evidences on various grounds of appeal raised by him, as soon as possible, if so desired without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.
8. Now we take ITA No. 480 to 482/Srt/2023 for A.Y. 2012-13 to 2014-15. In these appeals also, there was delay of 82 days in filing appeal before the Tribunal. Since I have condoned the delay in filing appeal

and restored the matter of the assessee to the file of Assessing Officer for deciding the issue afresh, therefore, these appeals are also restored back to the file of Assessing officer for deciding the issue afresh. In the result, the grounds of these appeals are also allowed for statistical purpose.

9. In the result, all these appeals of assessee are allowed for statistical purposes only.

Order announced in open court on 26<sup>th</sup> October, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 26/10/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat