

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.8/SRT/2021

Assessment Year: (2012-13)

(Physical Hearing)

M/s. Raiyani Brothers, 9, Dumaswala Compound, Near Sargam Doctor House, Hira Baug, Varachha Road, Surat – 395006.	Vs.	Income Tax Officer, Ward-3(3)(4), Surat, Aaykar Bhavan, Majura Gate, Surat- 395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFR0702K		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	13/10/2023
Date of Pronouncement	30/10/2023

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)-3, Surat [in short “the ld. CIT(A)”], in Appeal No.CIT(A),-3/10649/2016-17, dated 17.05.2019, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 30.11.2016.

2. At the outset, Ld. Counsel for the assessee informs the Bench that the appeal filed by the assessee for the assessment year (AY) 2012-13, is barred by limitation by five hundred forty-seven (547) days. The Ld. Counsel explained the delay stating that out of 547 days delay, the two hundred twenty three (223) days delay is attributable to

Covid-19 Pandemic. For balance delay of three hundred twenty four (324) days, (547 - 223), the Ld. Counsel submitted the petition for condonation of delay, which is reproduced below:

“In respect of the above, I would like to submit that I have filed this appeal on 02.02.2021 under section 253(1) of the Income Tax Act, 1961 against the order of the Commissioner (Appeals) relating to A.Y.2012-13 made on the 17.05.2019 vide ITA No.8/SRT/2021, which was communicated to us on 06.06.2019. Though this appeal should have been filed in the office of the Tribunal on or before the counting the period of sixty days from the date of communication of the order, but it could not be so filed because our Accountant, Shri Praful S. Gulhane was taking care of our all Income Tax matters and he was regular follow up with CA for status of our cases, We used to give them any notices and orders issued by the department. But suddenly, due to kidney problems, He was on leave and under medical treatment of kidney failure, then his kidney transplant operation made on 20.11.2018 and He was living in separate Room and under supervision of Doctor for 12 months. Hence, he could take care about the CIT(A) `s order. When we have received call from the Income Tax Department for VIVAD SE VISWAS SCHEME-2020, we inquired about our pending appeals and discussed with my Accountant, we noticed that appeal remains to be filed against the CIT(A) Order for AY 2012-13, thereafter, we consult with the CA and immediately filed appeal before the Hon. ITAT, Surat on 02.02.2021 against the crier of CIT(A). Hence, necessary arrangement could not be made for filing of appeal before Hon'ble ITAT, Surat in time.

Further, I would like also submit that the limitation period was extended from 15.03.2020 to 28.02.2022 due to Covid-19 as per the order of Honourable Supreme Court of India MA No.21 of 2022 for the purpose of limitation as may be prescribed under any general and special laws in the respect of all judicial or quasi-judicial proceedings.

In view of the above fact, it is clear that is the delay in submission of the appeal is due to good and sufficient reasons, therefore, pray that the delay in filling the appeal should be condoned and the appeal should be treated as filled within the allowed time.”

3. On the other hand, learned Senior Departmental Representative (ld. Sr. DR) for the Revenue stated that the assessee has not explained the sufficient reasons for delay, therefore delay should not be condoned.

4. We have heard both the parties on this preliminary issue and noted that balance delay of three hundred twenty four (324) days, (547 -223) has occurred mainly because the assessee was feeling severe problem of kidney and doctors have given medical treatment of kidney failure and the kidney was made transplant, and after that the assessee was living in a separate room with supervision of Doctor for more than twelve months, therefore assessee could not take decision to file the appeal before Tribunal. The Id Counsel has produced before us the proof and evidences of kidney transplant hence we note that it is a sufficient reasons to condone the delay. We note that the 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. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay.

5. On merit, Ld. Counsel for the assessee submitted that the assessee's case relates to Rajendra Jain group cases wherein the Assessing Officer has made 100% addition on account of bogus purchases. On appeal by assessee, the Id. CIT(A) confirmed the addition at the rate of 5% of bogus purchases observing as follows:

“6.2.18. In view of the above facts and discussion, it is evident and clear that the so called transactions through banking channels of purchase made from the concern of Rajendra Jain and others was a make believe arrangement through a series of transfers of unaccounted funds through multi layering to give it a look of a genuine transaction. The very facts remains that the whole arrangement of providing the bogus accommodation entries were established beyond doubt during the search proceedings as no evidence of any sales purchase of diamonds was found neither any stocks of the diamonds was found. These evidences when confronted were admitted u/s 132(4) of the Act by Rajendra Jain and others himself. The income tax proceedings are not governed by the strict

rules of evidences and are not required to prove the impossible. In the decision of the Hon'ble ITAT Bench, Surat in the case of Deputy Commissioner of Income Tax Circle 2(2) vs J. B. Brothers, Surat vide ITA No, 3661/Ahd/2015 & Co. No. 22/Ahd/2016 AY 2007-08 date of order 06.04.2018 and M/s Delux Diamonds, Surat Vs. Income Tax Officer, Ward 1(3)(1), Surat vide ITA No, 1396/Ahd/2017 AY 2007-08 date of order 11.4.2018: restricted the addition to 5% of bogus purchases. Therefore, in the light of above facts and circumstances and considering the gross profit rate of 5% as the average rate of the industry and following the judicial pronouncement by the Co-ordinate Bench of Tribunals and the decision of Hon'ble Jurisdictional Gujarat High Court in the case of Mayank Diamond Pvt. Ltd. v ITO (Tax Appeal No. 200 of 2003) dated 17.11.2014 (2014(11) TMI 812 (Guj)); the addition is restricted to 5% of bogus purchases. The circumstantial evidences itself show that the purchases amounting to Rs.3,00,35,292/- were not genuine and therefore the AO is being directed to recalculate addition made by the AO @ 5% of the bogus purchases is upheld and the ground of appeal is partly allowed.”

6. The Ld. Counsel argued that since assessee has submitted books of accounts, bills and vouchers, stock register, and transactions were through banking channel, therefore entire addition should have been deleted by the ld. CIT(A).

7. On the other hand, ld. Sr. DR for the Revenue submitted that addition made by the Assessing Officer should be sustained because it is a case of bogus purchases and the assessee has inflated the purchase expenses to reduce the profit and hence addition made by the Assessing Officer may be sustained.

8. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. We note that Coordinate Bench of ITAT Surat in more 100 appeals, *wherein* the similar assesseees were beneficiaries of similar bogus purchases, this combination has restricted the similar addition to the extent of 6% of bogus purchases, shown in Rajendra Jain / Bhanwer Lal Jain cases groups vide judgment, in the case of Pankaj K. Choudhary (in ITA No.1152/AHD/2017), dated 27.09.2021 wherein the Tribunal

sustained the addition at the rate of 6% of bogus purchases. We find that Ld.CIT(A) has sustained the addition at the rate of 5% of bogus purchases. The Tribunal does not have power to enhance the addition. Hence we note that assessee got sufficient relief at the first appellate stage and therefore does not deserve further relief, hence we dismiss the appeal of the assessee.

9. In the result, appeal filed by the assessee is dismissed.

Order is pronounced on 30/10/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 30/10/2023

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