

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

आयकर अपील सं./ITA No.408/SRT/2023

Assessment Year: (2014-15)

(Virtual Hearing)

Kamaldeep Harcharanjitsingh Dang, 79A, Silver Oak Farm, Road No.4, Ghitorni, New Delhi – 110030.	Vs.	The ITO, Ward – 3(1)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACEPD3949B		
(Appellant)		(Respondent)

Appellant by	Shri Vinod Kumar Bindal, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	04/09/2023
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) 2014-15, 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) Surat-3/10532/2016-17, dated 01.03.2019, which in turn arises out of an assessment order passed by Assessing Officer u/s 143 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 31.10.2016.

2. Since the assessee was shifted from Surat to Delhi therefore, assessee’s appeal filed before ITAT, Surat Bench in ITA No. 38/SRT/2023, for assessment year (AY) 2014-15 was dismissed and

liberty was given to the assessee to file the appeal before ITAT, Delhi-Benches, vide following findings of the Tribunal:

“3. Today, the matter was listed for hearing, the learned Authorised Representative (ld. AR) of the assessee submits that he has already filed application for seeking withdrawal of the present appeal from Surat bench of Tribunal with the liberty to file the appeal before the Delhi benches of Tribunal as the assessee has already shifted to Delhi. The assessee is facing difficulty in pursuing and conducting the appeal in Surat. The ld. Sr. DR for the revenue raised no objection on such request. 4. I have considered the submissions of both the parties and find that the assessee has already filed application for transfer of present appeal from Surat Bench to Delhi Benches of the Tribunal. Considering the submission of ld. AR of the assessee, the appeal of assessee alongwith application for condonation of delay is dismissed as withdrawn. The assessee is given liberty to file the appeal before the Delhi Benches of Tribunal and to pursue the same. The Registry of this Bench is directed to provide copy of this order to both the parties as soon as possible.”

3. Therefore, in pursuance of the above order, the assessee filed the appeal before ITAT, Delhi-Benches. However, ITAT, Delhi-Benches, transferred the appeal of assessee in ITA No.408/SRT/2023, to Surat Bench. Therefore, appeal of the assessee in ITA No.408/SRT/2023, has heard afresh on merit.

4. At the outset itself, Learned Counsel for the assessee informs the Bench that appeal filed by the assessee for assessment year (AY) 2014-15, is barred by limitation by one thousand three hundred sixty (1360) days. The ld. Counsel for the assessee, submitted the petition for condonation of delay, requesting the Bench to condone the delay, which is reproduced below:

“AFFIDAVIT

I, Kamaldeep Harcharanjitsingh Dang S/o Late Mr. Harcharanjit Singh Dang R/o 79A, Dang Farm, Silver Oak Farms, Road No. 4, Ghitorni, New Delhi-110030 do hereby solemnly affirm and state on oath as under:

- 1. That I am assessed to income-tax vide PAN: ACEPD3949B.*
- 2. That earlier I used to live in Surat, Gujarat where I engaged one Mr. Nitin Vasaiwala, Advocate, having his office at 103, Silver Palace,*

Opp. Begampura Police Chowki, Koliwad, Begampura, Surat-395003 as my Tax Consultant who used to file my income-tax returns and represent me in the income-tax proceedings.

3. *That my income-tax case for the AY 2014-15 was assessed u/s 143(3) of the Income-tax Act, 1961 and an addition of Rs.21,60,000/- was made, against which I preferred an appeal before the CIT(Appeals), Surat-3 through the said Advocate, Mr. Nitin Vasaiwala and his email address [vasaiwalanitin@yahoo.com] was given in Form-35 for electronic communication as I was not familiar with the use of electronic media at that time.*

4. *That from the year 2016 due to some family circumstances started staying more in Delhi but I continued to file my income-tax returns through Mr. Nitin Vasaiwala at Surat.*

5. *That during COVID-19, Mr. Nitin Vasaiwala expired and as a result I could not get to know of the status of the proceedings before CIT(A), Surat-3 and also that the appellate order had been passed ex-parte against me on 01/03/2019. It was only during September, 2022 that my Tax Consultants in Delhi noticed in the IT Portal that some tax dues were pending against me for the AY 2014-15 and I immediately started making enquiries at Surat in this regard. I came to know that unfortunately Mr. Nitin Vasaiwala, Advocate had passed away on 21/03/2021 and that no one attended the appellate proceedings.*

6. *That after pursuing the matter further at Surat, I traced the first appellate order for the AY 2014-15 and filed an appeal before the Hon'ble ITAT at Surat on 19/01/2023 vide ITA No. 38/Srt/2023.*

7. *That during the hearing of my request for transfer of the said appeal from Surat Bench to Delhi Benches of the Hon'ble ITAT, in order to avoid the long drawn process of transfer, I agreed to withdraw the said appeal and to file appeal before the Hon'ble ITAT, New Delhi; and an order to this effect was passed on 01/04/2023 by the Hon'ble ITAT, Surat.*

8. *That the email address on which the notices were sent by CIT (Appeal) belonged to my tax consultant and it transpires from the appellate order that he did not attend the proceedings for reasons best known to him; however since he has passed away, I have no way to find out the reason for his non-attendance now.*

9. *That I am not tech-savvy and do not understand the nuances of operating the ITBA Portal, therefore, at my request the said Advocate only had accepted the responsibility of looking up for any notices, etc. in the ITBA Portal; and due to the onset of COVID-19 pandemic and lockdown restrictions, I did not go to Surat for 2-3 years in between.*

10. *That after getting upraised of the tax demand against me, I went to Surat in November, 2022 and consulted a firm of Chartered Accountants*

there who filed an appeal against the first appellate order before the ITAT, Surat on 19/01/2023, i.e., after a delay of 1360 days (counting the delay from 01/05/2019).

11. That the delay in filing the second appeal before the Hon'ble ITAT, Surat and now before the Hon'ble ITAT, Delhi may kindly be condoned in the interest of justice considering that the delay was neither intentional nor willful but due to good and reasonable cause as shown herein above."

5. The Ld. Counsel for the assessee argued that since the assessee was shifted from Surat to Delhi therefore, assessee's appeal, which was originally filed before ITAT Surat Bench, in ITA No.38/SRT/2023, for assessment year (AY) 2014-15 was dismissed with the liberty to the assessee that he can file the appeal before ITAT, Delhi-Benches. As per the order of the ITAT Bench Surat, the assessee filed the appeal before ITAT, Delhi-Benches, in ITA No.408/SRT/2023. However, ITAT, Delhi-Benches, transferred the appeal of assessee in ITA No.408/SRT/2023, to Surat Bench, therefore in this process the delay has occurred.

6. The Ld. Counsel explained the other reason of delay, stating that during the relevant previous year, the assessee used to live in Surat, Gujarat and also filing his returns of income there only. The case of the assessee for assessment year (AY) 2014-15, was picked up for scrutiny u/s 143(3) of the Act by ITO, Ward 3(1)(4), Surat. The assessee engaged one Mr. Nitin Vasaiwala, Advocate, having his office at 103, Silver Palace, Opp. Begampura Police Chowki, Koliwad, Begampura, Surat-395003, as his Tax Consultant for filing his income-tax returns and represent him in the income-tax proceedings. Income-Tax case for the AY 2014-15 was assessed u/s 143(3) of the Income-Tax Act, 1961 and an addition of Rs. 21,60,000/- was made, against which the assessee preferred an appeal

before the CIT(Appeals), Surat-3, through the said Advocate, Mr. Nitin Vasaiwala and his email address [vasaiwalanitin@yahoo.com] was given in Form-35 for electronic communication, as the assessee himself was not familiar with the use of electronic media at that time. The assessee moved out of Surat from the year 2016 due to some family circumstances and started staying more in Delhi but continued to file his income-tax returns through Mr. Nitin Vasaiwala at Surat. During COVID-19, Mr. Nitin Vasaiwala expired and as a result the assessee could not get to know of the status of the proceedings before CIT(A)-3, Surat. It is known why the said attorney did not apprise the assessee that the first appellate order had been passed ex-parte against him on 01/03/2019. It was only during September, 2022 that the Tax Consultants in Delhi noticed in the I.T. Portal that some tax dues were pending against the assessee for the AY 2014-15 and he immediately started making enquiries at Surat in this regard. It is then that he came to know of the unfortunate demise of Mr. Nitin Vasaiwala, Advocate on 21/03/2021 and also that no one attended the appellate proceedings before CIT(A). The assessee pursued the matter further at Surat and traced the first appellate order for the AY 2014-15 and filed an appeal before the Hon'ble ITAT at Surat on 19/01/2023, vide ITA No. 38/Srt/2023, along with an application for condonation of delay. During the hearing of his request for transfer of the said appeal from Surat Bench to Delhi Benches of the Hon'ble ITAT, in order to avoid the long drawn process of transfer, the assessee agreed to withdraw the said appeal as well as the condonation application and filed the appeal before the Hon'ble ITAT, New

Delhi; and an order to this effect was passed on 11/04/2023 by the Hon'ble ITAT, Bench Surat (SMC), Surat. It is categorically submitted by the assessee that the email address on which the notices were sent by CIT (Appeal) belonged to his tax consultant. This fact is also apparent from Form-35, copy of which has been filed with Form-36 at ITAT, New Delhi. It transpires from the appellate order that he did not attend the proceedings for reasons best known to him; however since he has passed away, the assessee has no way to find out the reason for his non-attendance now. The assessee is not tech-savvy and does not understand the nuances of operating ITBA Portal, therefore, at his request the said Advocate only had accepted the responsibility of looking up for any notices, etc., in the ITBA Portal; and due to the onset of COVID-19 pandemic and lockdown restrictions, the assessee did not travel to Surat for 2 to 3 years in between. After getting apprised of the tax demand against him, the assessee went to Surat in November, 2022 and consulted a firm of Chartered Accountants there who filed an appeal against the first appellate order before the ITAT, Surat on 19/01/2023, i.e., after a delay of 1360 days (counting the delay from 01/05/2019) *vide* ITA No. 38/SRT/2023. This appeal was heard on 11/04/2023 by the Hon'ble SMC Bench, ITAT, Surat and on the request of the appellant to transfer the case to ITAT, New Delhi an order dated 11/04/2023 was passed transferring the case. On presenting Form-36 for filing the said appeal in ITAT, New Delhi, registry refused to accept the same. It was informed that in a recent judgment dated 21/05/2021 of the Hon'ble Bombay High Court in the case of *MSPL Limited Vs. Pr. CIT-1, Mumbai [2021] 127*

taxmann.com 379 (Bombay) the issue relating to the power of the Hon'ble ITAT President to transfer an appeal before a particular bench to another bench outside the headquarters in a different state was decided quashing the order passed by President of income tax Appellate Tribunal transferring the appeals filed by the petitioner from Bangalore Benches to Mumbai Benches on the application made by the revenue for the transfer of the appeals pending for hearing before Bangalore Bench. It was further informed that the appeal against the said order is pending before the Hon'ble Supreme Court and until it is adjudicated no inter-state of cases was possible. Accordingly, the Form-36 filed by the appellant was sent to the Registry, ITAT, Surat and the same has been admitted vide ITA No.408/SRT/2023 now. The delay in filing the second appeal before the Hon'ble ITAT, Surat and now before the Hon'ble ITAT, Delhi may kindly be condoned in the interest of justice considering that the delay was neither intentional nor willful but due to good and reasonable cause as shown herein above.

7. On the other hand, Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue stated that assessee has not explained the sufficient reasons, therefore such huge delay should not be condoned. The ld. Sr. DR for the Revenue also relied on the recent judgment of Hon'ble Supreme Court in the case of CIT vs. Karam Chand Thappar & Bros (P.) Ltd., (1989) 43 taxmann.com 45 (SC), dated 14.02.1989 and ld. Sr. DR also relied latest judgement in the case of CIT (IT-4) vs. M/s. Reliance Telecom Ltd. and CIT (IT-4) vs. M/s. Reliance Communication Ltd., in Civil Appeal Nos. 7110 & 7111 of 2021, dated 03.12.2021. The ld DR for the Revenue submitted that

condonation of delay is not the matter of right, hence delay should not be condoned and appeal of the assessee may be dismissed on this score only.

8. I have heard both the parties on this preliminary issue and note that assessee has handed over the taxation work to his advocate in Surat and instructed his advocate to take the responsibility of receiving Income Tax notices and reply to the Income Tax Department in the ITBA portal. Later on the said advocate was died. Thereafter, the assessee, due to Covid-19 pandemic and lockdown restriction, did not travel from Delhi to Surat. The Assessee's appeal filed before ITAT, Surat in ITA No.38/SRT/2023 for AY.2014-15 was dismissed and liberty was given to the assessee to file the appeal before ITAT, Delhi Benches. Therefore, assessee filed the appeal before ITAT, Delhi. However, ITAT, Delhi transferred the appeal of assessee in ITA No. 408/SRT/2023 to Surat Bench. I also note that the part delay in filing the appeal has occurred due to Covid -19 pandemic also. As per the judgment of *Hon'ble Supreme Court* in *MA Nos.21 of 2022 & 665 of 2021*, in *Suo Motu Writ Petition (Civil) No.03 of 2020, dated 10.01.2022*, wherein the Hon'ble Supreme Court has stated that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. The findings of the Hon'ble Supreme Court are reproduced below:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the MA No.21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

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 Section 23(4) and 29A of the Arbitration and conciliation 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.

6. As prayed for by learned Senior Counsel, M.A No.29 of 2022 is dismissed as withdrawn.”

9. Therefore, I note that the delay between the periods from 15.03.2020 to 28.02.2022 shall be excluded in computing the delay due to Covid -19 pandemic. Therefore, the effective delay in filing the appeal in assessee's case is less than the delay of 1360 days. Thus, before me, the assessee has explained the delay stating two reasons, viz: (i) due to Covid -19 pandemic and because of the mistake of the CA/Advocate of assessee. I 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, I am of the

considered opinion that in the interest of justice, the delay deserves to be condoned. I, accordingly, condone the delay.

10. On merit, Learned Counsel for the assessee submitted that the order passed by the ld. CIT(A) is an *ex parte* order without adjudicating the issue on merit. Therefore, the ld. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice. The ld. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee.

11. On the other hand, ld. Sr. DR for the Revenue opposed the prayer of the assessee, stating that there is no excuse for ignorance of law and assessee has deliberately not attended the office of the ld. CIT(A), therefore appeal of the assessee may be dismissed.

12. I have heard both the parties and perused the material available on record. I note that in the assessee's case under consideration, the assessment was carried out u/s 143(3) of the Act and the impugned order passed by the ld. CIT(A), is an *ex parte* order and non-speaking order, therefore, I do not wish to make any comments on the merits of the grounds raised by the assessee.

13. Considering the above facts, I note that assessee could not plead his case successfully before the ld. 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, ld. CIT(A) did not pass order on merit based on the material available on record. Hence, I am of the

view that one more opportunity should be given to the assessee to plead his case before the ld. CIT(A). 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 ld. CIT(A) 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 ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

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

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

सूत /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