

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

आयकर अपील सं./ITA No.369/SRT/2023

Assessment Year: (2009-10)

(Hybrid Hearing)

Kamlesh Jethmal Shah, Plot No.P-9/1, Everest Garden, Opp. Indian Bank, Naroli Bank, Naroli Road, Silvassa – 396230.	Vs.	The ITO, Silvassa Ward, Silvassa
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AEQPS7259R		
(Appellant)		(Respondent)

Appellant by	Shri Hardik Vora, Advocate
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	07/12/2023
Date of Pronouncement	29/12/2023

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2009-10, 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 23.11.2021, 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 26.12.2016.

2. The appeal filed by the assessee for assessment year (AY) 2009-10 is barred by limitation by seven hundred thirty one (731) days. The Id. Counsel for the assessee submitted a petition for condonation of delay alongwith affidavit and stated that assessee has explained the sufficient cause/reasons in the affidavit for condonation

of delay and therefore delay should be condoned. The contents of the petition for condonation of delay are reproduced below:

*“My mother was on bad rest and not able to walk and we had to go frequently for her medical checkup at various hospitals on regular basis and further, I am alone in my family and I had to handle all my mother’s medical situation lonely as well as day to day livelihood of my family. Meanwhile, my young brother was also expired in road accident during tis period and thereafter, my mental condition was very disturbed and I was not in normal condition to handle other matter, and further, there was also COVID fear situation in all over India, by all above reasons I could not give the papers and other documents on time to Advocate and result of which, I could not file the appeal on time.*

*That considering the above circumstances, it is prayed before your honour that the delay in filing appeal for AY.2009-10 may kindly be condoned in the interest of justice.*

*I, Kamlesh Jethmal Shah herein above, do hereby declare and verify that above stated facts of this affidavit are true to my personal knowledge and no part of it is false. I know that making false affidavit is crime punishable in law.”*

3. Based on the contents of the petition for condonation of delay, the Id. Counsel stated that younger brother of the assessee expired in the road accident and therefore the assessee’s mental conditions was disturbed and therefore could not take any decision to file the appeal. The Id. Counsel also submitted that assessee’s mother was also in a severe illness condition and therefore in the assessee’s home, there was completely an uncertain environment was prevailing and this has resulted into delay to file the said appeal. Besides, Covid-19 pandemic was also one of the reasons that assessee could not file this appeal on time.

4. On the other hand, Learned Senior Departmental Representative (Id. Sr. DR) for the Revenue submitted that assessee has not explained the reasons for delay and the assessee has only narrated the general things which are not sufficient reasons to condone the delay. If the

assessee's brother had died in the road accident and assessee's mother was also feeling severe illness since a long, in that circumstance also, the assessee could have instructed his advocate to file the appeal before the Tribunal, which the assessee has failed to do so, therefore, delay should not be condoned.

5. I have heard both the parties on this preliminary issue. I note that assessee has explained by way of letter before the Bench that actual delay in filing the appeal is four hundred eighty six (486) days only and not seven hundred thirty one (731) days. The application filed by the assessee to explain the delay is only for four hundred eighty six (486) days. The Ld. Counsel invited my attention towards the defect memo of the Registry of the Tribunal stating that the defect notice dated 25.05.2023, erroneously states the date of the CIT(A)'s order, as 23.03.2021, instead of 23.11.2021. This discrepancy has resulted in the miscalculation of the delay days mentioned in the notice, indicating 736 days instead of actual delay in filing of the appeal, that is, 486 days. Therefore, the delay in filing the appeal is only 486 days. The said delay has been explained by Ld. Counsel stating that the difficulties faced by litigants due to restrictions on movement and in an attempt to reduce the transmission of the deadly Covid-19, the Hon'ble Supreme Court extended the limitation period, vide MA No.21 of 2022 in MA No. 665 of 2021 in SMW(c) No. 3 of 2020 and directed a *suo moto* extension of time limits clarifying that the period from 15.03.2020 till 28.02.2022 shall be excluded in computing the periods prescribed under the general law of limitation or under any special laws (both Central and/or State) on the filing of all appeals, suits, petitions, applications and all other quasi proceedings. Accordingly, the period of 52 days starting from

22.01.2022 to 15.03.2022 should be excluded in counting the days of delay in filing of the said appeal.

6. The balance delay has been explained by Ld. Counsel stating that the unfortunate passing of the assessee's younger brother in a tragic road accident, coupled with the critical health condition of the assessee's mother, demanded the constant attention and care of the assessee. The assessee's mother was completely bed-ridden, rendering her unable to move independently. This compelled the assessee to shoulder the responsibility of accompanying her for frequent medical check-ups at various hospitals. The strain of managing these demanding family responsibilities took a toll on the assessee's mental well-being. The continuous stress and emotional turmoil arising from these circumstances significantly affected the ability to address other aspects of life, including the timely pursuit of legal matters, such as filing this appeal. There was completely an uncertain environment in the assessee's family. Hence, the overwhelming nature of these personal challenges inadvertently caused the delay in attending to the legal proceedings related to the appeal. Accordingly, I note that the delay was unintentional and the assessee had no malafide intention by filing this appeal delay.

7. I am of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of litigation. Be that as it may, I have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others , reported in 167 ITR 471, (1988 SC 897) (7) observes ....

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.”

When I weigh these two aspects then the side of justice becomes heavier and casts a duty on me to deliver justice. I, therefore, condone the delay and admit the appeal for hearing.

8. On merits, at the outset itself, 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 submitted that the order passed by the Assessing Officer, as well as ld CIT(A), both are *ex parte orders*. 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.

9. On the other hand, ld. Sr. DR for the Revenue stated that basic facts have not been examined by the Assessing Officer, therefore matter may be remitted back to the file of Assessing Officer for *de novo* assessment.

10. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. 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. 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.

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

Order is pronounced on 29/12/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 29/12/2023

*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