

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**IT(SS)A Nos: 51 to 53/Ahd/2019
Asst. Years: 2009-10, 2010-11 & 2013-14**

**& ITA Nos: 138 & 139/Ahd/2020
Asst. Years: 2010-11 & 2013-14**

Ravindrabhai Lakshmanrav Mane B-4, Neelkanth Colony Nr. Vijaynagar Society, Kankariya, Ahmedabad Gujarat-380028 PAN: ANPPM3035P (Appellant)	Vs	The ITO, Ward-5(3)(5), Ahmedabad (Respondent)
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Assessee Represented: Shri Aseem L. Thakkar, A.R.
**Revenue Represented: Shri Kamlesh Makwana, CIT-DR &
Shri Ashok Kumar Suthar, Sr. D.R.**

Date of hearing : 08-02-2024
Date of pronouncement : 21-02-2024

आदेश/ORDER

PER BENCH:

IT(SS)A Nos. 51 to 53/Ahd/2019 appeals are filed by the assessee as against separate appellate orders all dated 17.01.2018 passed by Commissioner of Income Tax (Appeals) arising out of the assessment orders passed under section 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years (A.Ys) 2009-10, 2010-11 & 2013-14 and ITA Nos. 138 &

139/Ahd/2020 are filed by the assessee as against the exparte appellate orders both dated 21.11.2019 passed by the Commissioner of Income Tax (Appeals) arising out of the confirmation of penalty levied under section 271(1)(c) of the Act relating to the Assessment Years 2010-11 & 2013-14. Since common issues are involved in all these appeals, the same are disposed of by this common order.

2. The Registry has noted that there is a delay of 326 days in filing the quantum appeals and 1 day delay in filing the penalty appeals by the assessee.

3. Ld. Counsel Shri Aseem L. Thakkar brought to our notice to the Affidavit filed by the assessee, wherein it is stated that the assessee is an individual, having small business income. During the seizure of cash from the possession of two persons at State Bus Transport Depot at Valsad, pursuant to that warrant of authorization was executed in the name of the assessee following that notices u/s. 153A was issued to the assessee. In response, the assessee filed his Returns of Income and assessments were completed through his Chartered Accountant Shri R.K. Jindal, making addition on account of unexplained cash credits.

3.1. Aggrieved against the same, the assessee filed appeals before Ld. CIT(A), who dismissed the appeals filed by the assessee. The same was not informed to the assessee by his former Chartered Accountant. It is thereafter, the AO initiated penalty proceedings and passed exparte penalty orders on 07.09.2018. The assessee filed appeals against the penalty orders with a delay of 79 days before Ld. CIT(A), who gave various opportunities to the assessee, however the assessee failed to

appear, therefore Ld. CIT(A) dismissed the appeals by not condoning the delay of 79 days in filing the appeals. Because of the non-communication by the former Tax Consultant, the assessee filed the quantum appeals before the Tribunal with a delay of 326 days and Penalty appeals with a delay of 1 day. The assessee further stated he paid the appropriate appeal fees on 11.01.2019 itself, however filed the appeal on 06.03.2019 because of the misguidance of the former Tax Consultant. It is thereafter, the assessee engaged the present Counsel to handle the above quantum appeals along with the penalty appeals. Thus the assessee expressed the genuine hardship and prayed to condone the delay and with direction to the Ld. CIT(A) to dispose the appeals on merits of the case.

4. Per contra Ld. CIT-DR Shri Kamlesh Makwana appearing for the Revenue strongly opposed the condonation petition and submitted that the assessee has not filed the Affidavit of the former Tax Consultant as supporting document to condone the substantial delay of 326 days. Ld. CIT-DR further relied on Madras High Court Judgment in the case of Royal Stitches Pvt. Ltd. -Vs- DCIT (2023) 156 taxmann.com 361 (Madras) and Jaipur Bench ITAT decision in the case of Ajay Kumar Jain vs. ACIT (2020) 121 taxmann.com 384 (Jaipur-Trib.) and strongly opposed not to condone the delay since sufficient cause is not established by the assessee. Thus the appeals filed by the assessee are liable to be dismissed.

5. In response, Ld. Counsel Shri Aseem L. Thakkar brought to our attention to the Jurisdictional High Court judgment in the case of Jayvantsinh N. Vaghela -Vs- ITO reported in (2013) 40 taxmann.

com 491 (Guj.) wherein the Hon'ble High Court held that appeal cannot be dismissed on technical ground like delay, etc. unless it is found that there is gross negligence on the part of the assessee and there is any mala fide intention on the part of the assessee in not filing the appeal within the period of limitation prescribed under the Act. Therefore in the present case, there is no negligence on the part of the assessee in filing the above appeals, therefore Ld AR humbly prayed to condone the delay in filing the appeals and decide the case on merits.

6. We have given our thoughtful consideration and perused the materials available on record. As it can be seen from the assessment order, the Chartered Accountant Shri R.K. Jindal appeared before the Assessing Officer while framing the assessment as well as appeared in the quantum appeals before Ld. CIT(A). During the penalty proceedings, none appeared before the Assessing Officer which has resulted in passing an exparte penalty orders as well as appellate orders. It is thereafter, the assessee engaged the present Counsel with the delay of 326 days in filing the quantum appeals and 1 day delay in filing the penalty appeals. It is always to be kept in mind that the condonation of delay is always a double edged sword, which has sharp edges on both sides and to be handled carefully by any party.

6.1. The Madras High Court judgment namely Royal Stitches Pvt. Ltd. (cited supra) relied by the Ld. CIT-DR held as follows:

“...It is trite law that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the 'sufficient cause' which means an adequate and enough reason which prevented him to approach the Court within limitation. It is crystal clear that

the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party. In the present case, the petitioner/appellant has not given 'sufficient cause' for condoning the huge delay of 1072 days in filing the appeals.”

6.2. In our considered view, the assessee has demonstrated a reasonable cause for not filing the appeals within the statutory period of limitation, on the mis-representation of former Tax Consultant resulting in passing exparte orders and filing appeals with delay.

6.3. Ld. CIT-DR's next plea of former Tax Consultant supporting affidavit is not filed by the assessee before this Tribunal. Such a situation was considered by the Jurisdictional High Court in the case of Jayvantsinh N. Vaghela (cited supra) and held as follows:

“3.Considering the affidavits filed by the assessee before the Tribunal which are even reproduced by the learned Tribunal, we are of the view that the learned Tribunal has committed error in not condoning the delay and not considering the appeals on merits. It is required to be noted that there is no observation by the learned Tribunal that there was any deliberate delay on the part of the assessee and/or there was any mala fide intention on the part of the assessee in not preferring the appeals within a period of limitation. The reasoning given by the learned Tribunal that the assessee has not filed the affidavit of Income Tax Practitioner in support of the affidavits filed by the assessee is concerned, it is required to be noted that once the Income Tax Practitioner is changed it may not be possible for the assessee to get affidavit of Income Tax Practitioner. On the aforesaid ground, the condonation of delay was not required to be refused. It is a cardinal principle of law that normally by and large, the appeals are required to be decided on merits rather than dismissing the same on technical ground like delay etc. unless it is found that there was gross negligence on the part of the assessee and/or there was any mala fide intention on the part of the assessee in not preferring the appeal within the period of limitation and/or in filing the appeals belatedly. As observed by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag v. Mst. Katiji [1987] 2 SCC 107 ordinarily a litigant

does not stand to benefit by lodging an appeal late. It is further observed by the Hon'ble Supreme Court that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

4. Considering the aforesaid principles laid down by the Hon'ble Supreme Court and the facts of the case on hand, we are of the view that learned Tribunal ought to have condoned the delay and ought to have decided and disposed of the appeals on merits rather than dismissing the same on the ground of limitation."

6.4. As held by the Jurisdictional High Court, it is practically not possible for the assessee to collect from the former Tax Consultant explaining his misconduct by way of affidavit to any Authorities. As the assessee could not pursue with the former Tax Consultant for getting such affidavit, rather he pursued the matter with the new Tax Professional for filing the appeals with delay petitions, explaining the above reasons. Therefore in our considered view, the assessee has demonstrated "sufficient cause" in filing the above quantum appeals with a delay of 326 days and delay of 1 day in filing penalty appeals. Thus we are satisfied with the reasonable cause as explained above and we hereby condone the delay in filing the above appeals and take up the appeals on merits of the case.

7. Ld. Counsel Shri Aseem L. Thakkar submitted that the only additions made in all these assessments are unexplained cash credits of Rs.7,50,000/-, Rs.10,41,000/- and Rs.10,00,000/- for the respective Asst Years 2009-10, 2010-11 & 2013-14. It is clearly seen from the assessment orders, pursuant to the search, there is no seized material from the premises of the assessee, but only on verification of capital account, the AO noticed that the assessee has introduced the

above sums in its capital account, which were received as gift from his Paternal uncles. The assessee during the assessment proceedings clearly explained the source of gifts and also identity, creditworthiness and genuineness of the transaction. In the absence of any seized material and unabated assessments, the entire addition made by the AO is against the well settled principle of law by the Hon'ble High Court of Gujarat in the case of Saumya Construction Pvt. Ltd. which is confirmed by Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. Therefore prayed the addition made by the AO is liable to be deleted.

8. Per contra, Ld. CIT-DR supported the orders passed by the lower authorities and requested to uphold the additions.

9. We have given our thoughtful consideration and perused the materials available on record. It is clearly seen from the assessment order, more particularly Para 4.1, the Ld Assessing Officer stated, on verification of capital account, it is noticed that the assessee has introduced Rs.7,50,000/- in his capital account with narration as received from Janardan Rajaram Mane. On further verification, the Ld. AO treated the same as unexplained cash credits and added as the income of the assessee and demanded taxes thereon. Similar is the case relating to the other Asst. Years 2010-11 & 2013-14, wherein additions on this account made of Rs.10,41,000/- and Rs.10,00,000/- respectively.

10. Further it is well settled Principle of law by various judgements rendered by the Jurisdictional Gujarat High Court, when an assessment has to be made in relation to the search or requisition

under section 153A of the Act, namely, in relation to material disclosed during the course of search or requisition, if in relation to any particular assessment year, at the same time **when there is no incriminating material found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated.** This legal proposition is now settled by the Hon'ble Supreme Court by judgement dated 24-04-2023 in the batch of cases namely PCIT, Central-3 -Vs- Abhisar Buildwell Pvt. Ltd. reported [2023] 149 taxmann.com 399 (SC) holding that in respect of completed assessments/unabated assessments, no addition can be made by Assessing Officer in the absence of any incriminating material found during the course of search under section 132 or requisition made under section 132A of the Act observing as follows:

“Section [153A](#), read with sections [132](#) and [143](#), of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Conditions precedent) - Whether object of section 153A is to bring under tax undisclosed income which is found during course of search or pursuant to search or requisition; therefore, only in a case where undisclosed income is found on basis of incriminating material, Assessing Officer would assume the jurisdiction to assess or reassess total income for entire six years block assessment period even in case of completed/unabated assessment- Held, yes - Whether in case of search under section 132 or requisition under section 132A, Assessing Officer assumes jurisdiction for block assessment under section 153A and that all pending assessments/reassessments shall stand abated - Held, yes - Whether in respect of completed assessments/ unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A - Held, yes - Whether, however, completed/unabated assessments can be reopened by Assessing Officer in exercise of powers under section 147/148 subject to fulfilment of conditions as envisaged/mentioned under section 147/148 and those powers are saved - Held, yes

10.1. The Hon'ble Supreme Court in this case of Abhisar Buildwell Pvt. Ltd. considered Judgements of various High Courts and concurred with one of the Judgement of the Gujarat High Court in the case of Saumya Construction and laid down the following points in a nutshell :

"... ... 13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of *Kabul Chawla* (*supra*) and the Gujarat High Court in the case of *Saumya Construction* (*supra*) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

- (i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
- (ii) all pending assessments/reassessments shall stand abated;
- (iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
- (iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

11. Respectfully following the above judicial precedents, we have no hesitation in deleting the additions made on account of unexplained cash credit of Rs.7,50,000/-, Rs.10,41,000/- and Rs.10,00,000/- made by the Ld. AO for the respective Asst Years 2009-10, 2010-11 & 2013-14, without any incriminating material found during the course of search from the premises of the assessee.

12. In the result the **appeals filed by the assessee in IT[SS]A Nos. 51 to 53/Ahd/2019 are hereby allowed.**

13. ITA Nos. 138 & 139/Ahd/2020 are against confirmation of penalty u/s. 271[1][c] of the Act relating to the Asst. years 2010-11 & 2013-14. Since the additions made on the quantum appeals for the above assessment years are already deleted vide paragraphs 10 and 11 of this order, consequently the present penalty appeals has no legs to stand and therefore the penalty levied is hereby deleted and the **appeals filed by the assessee in ITA Nos.138 & 139/ Ahd/2020 are hereby allowed.**

Order pronounced in the open court on 21-02-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 21/02/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad

6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद