

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

ITA NO.178/MUM/2024(Assessment Year :2009-10)
ITA NO.181/MUM/2024(Assessment Year :2009-10)
ITA NO.179/MUM/2024(Assessment Year :2010-11)
ITA NO.180/MUM/2024(Assessment Year :2010-11)

Sunil Jagannath Tiwari,
Shop No.1, Shri Laxmi Society,
Karjat Road, Gandhi Chowk,
Kulgaon, Badlapur(E) – 421 503
PAN:ACZPT-6886-E

---- Appellant

Vs.

Income Tax Officer,
Ward 2(4), Kalyan,
2nd Floor, Mohan Plaza, Wayale Nagar,
Khadakpada, Kalyan(West)-421 301

--- Respondent

Appellant by : Shri Paresh Shaparia
Respondent by : Shri Dinesh A. Chourasia
Date of Hearing : 30/05/2024
Date of Pronouncement : 30/05/2024

ORDER

PER BENCH :

All these appeals filed by assessee are directed against the orders passed by Ld CIT(A), NFAC, Delhi and they relate to the assessment years 2009-10 and 2010-11 pertaining to quantum assessment proceedings and penalty proceedings.

2. The Ld.A.R submitted that quantum and penalty appeals filed before the Ld. CIT(A) were delayed by 31 months and 24 months respectively. The Ld. CIT(A) has refused to condone the delay on the reasoning that the assessee has misrepresented in the reasons given for the delay. The Ld.A.R submitted that the assessee did not

misrepresent any facts has held by Ld CIT(A). He submitted that the assessee had stated that there was delay in receipt of assessment order and further the Legal Representative was not available due to illness. Explaining the reasons for the delay, the Ld.A.R submitted that the Income Tax matters of the assessee were looked after by his Chartered Accountant named Ms. Ashwini Prabhu. During the impugned period, she was diagnosed with cancer and hence, she was not able to attend the Income Tax matters relating to the assessee, which caused the delay in filing appeals before Ld CIT(A). The Ld.A.R submitted that the aforesaid Chartered Accountant has furnished an affidavit confirming the aforesaid facts and has also enclosed the reports regarding detection and treatment of cancer. The ld A.R submitted that all these documents have been placed from pages 14 to 40 of the paper book. Accordingly, the Ld.A.R submitted that the explanation of the assessee that the Legal Representative was not available due to illness has been proved by the documents now furnished.

3. The Ld.A.R further submitted that the assessee's brother's appeal was also filed belatedly before the Tribunal and the very same reasons were given for the delay in filing of appeals. The ITAT, vide its order dated 27/02/2019 passed in ITA No.6491/Mum/2017 has accepted those explanations given by him and condoned the delay in filing of appeal before ITAT. Accordingly, the Ld.A.R submitted that the assessee could not file the these appeals in time before Ld. CIT(A) due to illness of the Legal Representative, which shall constitute reasonable cause for condoning the delay. Accordingly, he prayed for condoning the delay in filing of the appeal before Ld. CIT(A). He further submitted that the Ld CIT(A) has not adjudicated the appeals on

merits and accordingly prayed that all the issues contested in these appeals may be restored to his file for adjudicating them on merits.

4. We have heard ld. Departmental Representative and perused the record. The assessee has filed copy of affidavit given by the Chartered Accountant, Ms. Ashwini Prabhu and also the medical records relating to the treatment taken by her for the cancer. It is the submission of Ld.A.R that the filing of appeal before Ld.CIT(A) got delayed due to disability/illness of the Legal Representative of the assessee and in support of the same, the assessee has also furnished relevant documents. Thus, we notice that the delay in filing appeals before Ld CIT(A) has occurred on account of illness of the Legal Representative and on that account, the assessee should not suffer. We notice that an identical view has been taken by Bangalore Bench of the Tribunal in the case of Late Sri.Syed Wahid(Legal Heir of Sri Zoheb Ahmd Syed) vs. DCIT, in ITA No. 1006/Bang/2015, vide its order dated 23/12/2021. We also noticed earlier that the Co-ordinate Bench of Mumbai has condoned the delay in the case of assessee's brother Shri Anil Jagannath Tiwari (supra) accepting identical reasoning given for the delay.

5. Accordingly, we are of the view that there was a reasonable cause for the assessee in filing of appeal belatedly before the Ld.CIT(A). Accordingly, we condone the delay in filing the four appeals before the Ld.CIT(A).

6. Since, the Ld.CIT(A) has not adjudicated these appeals on merits, we deem it appropriate to restore all these issues urged by the assessee in these appeal to his files for adjudicating them on merits.

We also direct the assessee to fully co-operate with the Ld.CIT(A) for expeditious disposal of the appeals.

7. In the result, all the four appeals filed by the assessee are treated as allowed for statistical purpose.

Order pronounced in the open court on 30th May, 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 30th May, 2024

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai