

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH
MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

I T A. No. 4429/MUM/2023
(A.Y. 2012-13)

Shri.Virendra Mughumal Jangla,107, Sikkat Al Khalil Road, Near Down Town Hotel, Ismail Abdul Ahmed Bldg, Shop No. 2, Al Buteen Fikree Market, Nariman Point S O, Deira Dubai UAE. Represented by Pramod Gupta And Associates, Chartered Accountants. 303,Indore Trade Center, 3/2,Sardar Patel Marg, Chhoti Gwaltoli, Indore. Madhya Pradesh.	Vs .	CIT(A) – 57, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. ANZPM5534B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Bhuwan Modi.AR
Revenue by	Ms.Rajeshwari Menon.Sr.DR

सुनवाई की तारीख/Date of Hearing	30.05.2024
घोषणा की तारीख/Date of Pronouncement	31.05.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the
Commissioner of Income Tax (Appeals)(CIT(A)-57 Mumbai

passed u/sec 143(3) r.w.s 147 and u/sec 250 of the Act.
The assessee has raised the following grounds of appeal:

- 1. The appeal order passed by the CIT(A) is bad in law, wrong on facts, ill- conceived, prejudicial to the Constitution of India, against the Law of Natural Justice.*
- 2. THAT on the facts and circumstances of the case, the Ld CIT(A) erred to dismiss the appeal on the ground of delay in filling of the appeal, ignoring the fact that the assessment order was never served upon the assessee.*
- 3. On the facts and circumstances of the case, the Ld CIT(A) as well as assessing officer erred in passing the order ignoring the fact that the total investment by the appellant is Nil while both of the authorities held that the appellant has made investment of Rs 1.49 Crore in Mutual Funds without giving any opportunity to the appellant and made an addition u/s 69A of the IT Act 1961. The whole of the assessment order as well as appeal order is void ab initio and against the law of natural justice.*
- 4. The appellant authority and Ld Assessing officer has passed the order ignoring the correct fact that the appellant has denied his investment in Mutual Funds in his consolidated Account statement for FY 2011-12 of CAMS and erred in making addition of huge amount of 1.49 Crore u/s 69A to his income.*
- 5. On the facts of the case the Ld CIT(A) has erred to pass appeal order without mentioning the service of the order to the appellant. The whole appeal order is against the law of natural justice.*
- 6. On the facts of the case the AO passed the order on the basis of form 26AS which have no relevance to the appellant and thus the whole assessment order is bad in law, wrong on facts, against the law of natural justice.*
- 7. On the facts of the case the appellate authority and assessment authority has passed the orders ignoring the judgment of Hon Supreme court in case of suo moto cognizance of extending the limitation period and also ignoring the*

circumstances during pandemic situation in the country as well as whole world.

8. On the facts and circumstances of the case the CIT(A) has erred to pass the appeal order without considering the fact that the appellant is an NRI and resident of DUBAI henceforth email and other postal addresses of the appellant were not verified and stated in the assessment order and the service of notices were presumed and passed order ex-parte which is against the law of evidence act and natural justice and against law of constitution of India.

9. On the facts and circumstances of the case the CIT(A) and Assessing officer has erred to serve the assessment order and appeal order on the assessee address as "81 Mittal Chambers, 228 Nariman Point Mumbai 21", while bank account of assessee, i-taxnet NMS form 26 AS of assessee clearly mentions address of the appellant as under

31 32 wing B ShreeJi Darshan 3rd Floor Sahantilal Modi Road Dubai Dubai 400067", thus the whole assessment proceeding and appeal proceedings are illegal and void

10. On the facts and circumstances of the case the CIT(A) and Assessing officer has erred to consider the residential status of the assessee in original assessment order as "Resident", while the assessee is a non-resident which was apparent on record mentioned on passport of the assessee, bank statement, but the same fact was ignored by Id assessing officer to wrongly assess the income of assessee, which is bad in law and makes whole assessment null and void.

11. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

2. The brief facts of the case are that, the assessee is a Non Resident. The Income Tax Department has received information from NMS and AIR that, the assessee has purchased mutual funds for a consideration of Rs.1,49,99,900/- and has also received interest income of Rs.11,89,507/- in the F.Y 2011-12. Whereas the assessee

has not filed the return of income for the A.Y 2012-13 and the Assessing Officer (AO) has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. Subsequently, the AO has issued notice u/sec 142(1) of the Act on various dates referred at Para 2 of the assessment order through e-mail but no reply was filed in respect to notices by the assessee. Since there was no compliance to the notices by the assessee and no information was submitted. The AO relied on the information available on record and invoked the provisions of Sec. 144 of the Act and has made best judgment assessment by making addition of purchase of mutual funds of Rs.1,49,99,900/- and Interest on securities of Rs.11,89,507/- u/sec 69A of the Act and assessed the total income of Rs.1,61,89,407/- and passed the order u/sec 144 r.w.s 147 of the Act dated 21.12.2019.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and also there was delay in filing the appeal. Since there was partial compliance by the assessee and the delay in filing the appeal was not explained. Therefore the CIT(A) considering the information on record has not condoned the delay and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has not considered the facts that the assessee has received the A.O order and has filed the appeal before appellate authorities and the delay was not a wanton act. Further the Ld.AR emphasized that the assessee has good case on merits and prayed for an opportunity to substantiate with the material evidences before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie, the CIT(A) has passed the order considering the fact that there is no proper compliance by the assessee in spite of providing adequate opportunity of hearing and the delay in filling the appeal was not explained with the reasonable/ sufficient cause. Whereas the assessee has raised grounds of appeal challenging the additions by the A.O and there could be various reasons for no proper compliance. The Ld. AR emphasized that there are genuine reasons of the assessee for not filling the appeal before the CIT(A) in time and the delay was not wanton Act.The Ld.AR substantiated the facts with the affidavit of the assessee placed at Page 26 of the paper book for condonation of delay in filling before the CIT(A) as under:

Annexure - 5

SHRI VIRENDRA MUGHUMAL JANGLA,
107 SIKKAT AL KHALIL ROAD NEAR DOWN TOWN
HOTEL ISMAIL ABDUL AHMED BUILDING SHOP NO 2
AL BUTEEN FIKREE MARKET NARIMAN POINT SO
DEIRA DUBAI DUBAI UAE DUBAI 2508
vmjangla@jec-cor.com
21/04/2024

AFFIDAVIT

I, **VIRENDRA MUGHUMAL JANGLA**, aged 78 years,
Nationality: Indian, residing at 107 SIKKAT AL KHALIL
ROAD NEAR DOWN TOWN HOTEL ISMAIL ABDUL
AHMED BUILDING SHOP NO 2 AL BUTEEN FIKREE
MARKET NARIMAN POINT SO DEIRA DUBAI DUBAI
UAE DUBAI 2508, do hereby solemnly affirm and declare as
follows:

1. I am the Non Resident Indian, residing in Dubai since 1967 and a respectful businessman engaged into manufacturing and trading business of electronic items under the trade name of JEC-CORP. Website of my enterprise is www.jec-corp.com a electronics business at Dubai. My entire income is earned in Dubai and out of the same I am regularly making investments in Indian Mutual Funds, FDR's and Tax saving bonds via NRE accounts under my name in ICICI bank customer ID 508309511 and Punjab and Sindh Bank. On regular interval I have been remitting money into India in my NRI accounts held in India.
2. This affidavit is sought in order to establish the facts in the matter of Income tax Appeals in the Income tax appellate tribunal Mumbai in relation to AY 2012-13 for ex-parte order passed by Income Tax Authorities in India against me.
3. The assessment order was passed by the Indian Income Tax Authorities on 21/12/2019 considering arbitrary income and ex-parte order creating huge demand of INR 13608530/-. The said order was never received by me since the address mentioned in the order was wrong and does not belong to me. Also I had not received the said notices and order in email id that belong to me i.e. vmjangla@jec-cor.com.
4. I had received first notice of demand recovery from Income Tax department on 10/02/2022 on my email ID vmjangla@jec-corp.com, to which I immediately responded and then a copy of aforementioned assessment

order was sent on email to me subsequently, to which I had filed first appeal to Commissioner Income Tax (Appeals) (CIT(A)) on 06/03/2022. I have always been very prompt in reply for whatever communication I have received. Because, I had not received any sort of letter either by post or by mail, I couldn't respond earlier.

5. The CIT(A) passed order dated 12/10/2023 dismissing the appeal on ground of delay in filling appeal, aggrieved of the order of dismissal of CIT(A), Second appeal is filed before Income Tax Appellate Tribunal, Mumbai India on 06/12/2023

6. I affirm that the contents of this affidavit are true and correct to the best of my knowledge, belief, and understanding, and nothing material has been concealed therein.

7. I further affirm that I am executing this affidavit voluntarily and without any coercion, undue influence, or misrepresentation.

VIRENDRA MUGHUMAL JANGLA *V. M. Jangla*

(Signature)
 Sworn and affirmed before me on this 22 day of April 2024 in Dubai, United Arab Emirates.

[Signature of Notary Public]
 [Name of Notary Public]
 [Stamp/Seal of Notary Public]

Signed in my presence. He / She has been identified by his / her passport No. 25248702 issued at DUBAI on 03-07-2023
 No responsibility is accepted by Consulate General of India, Dubai for the contents of this document.

22 APR 2024

SHRI VIRENDRA MUGHUMAL JANGLA,
 107 SIKKAT AL KHALIL ROAD NEAR DOWN TOWN
 HOTEL ISMAIL ABDUL AHMED BUILDING SHOP NO 2
 AL BUTEEN FIKREE MARKET NARIMAN POINT SO
 DEIRA DUBAI DUBAI UAE DUBAI 2508
 vmjangla@jec-cor.com
 Date: 21-04-2024

Before the Income Tax Appellate Tribunal, MUMBAI
 BENCHES
 (CASE NO: ITA-4429/MUM/2023)
 A.Y. 2012-13 PAN ANZPM5534B
 HEARING BENCH : F CASE TYPE: DBC [City/Region]

V. M. Jangla

6. We considering the facts mentioned in the affidavit and the provisions of the Act found that there is a reasonable cause explained and there is no benefit is derived in causing delay in

filing appeal before the CIT(A). Whereas the Hon'ble Supreme Court in the case of B. Madhuri Goud vs. B. Damodar Reddy (2012) 12 SCC 693, has held that the following principles must be kept in mind while considering the application for condonation of delay;

(i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate cause of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation.*

(xi) *It is to be borne in mind that no one gets away with fraud, is representation or interpolation by taking recourse to the technicalities of law of limitation.*

(xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

7. The Hon'ble supreme court in the case of Collector, Land Acquisition Vs. MST Katiji & others (167 ITR 471) (SC) has observed as under :

“ The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters

at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”

8. We respectfully follow the observations and ratio of the decisions of Hon'ble Supreme Court and find that the delay in filing the appeal before the CIT (Appeals) by the assessee is supported with sufficient cause and pragmatic approach should be considered for condonation of delay and accordingly the delay is condoned. Hence considering the principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case along with the evidences. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal and allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 31.05.2024.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 31/05/2024

KRK.PS

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,

Mumbai