

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.520/Ahd/2024  
(Assessment Year: 2014-15)

Chovis Gam Sachidanand Medical and Research Centre Borsad, 1, Shraddha Hospital, Borsad Singlav Road, Borsad, Anand- 388530	Vs.	Income Tax Officer, Ward Exemption, Vadodara
[PAN No.AAATC7495F]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri S. N. Divatia & Shri Samir Vora, A.Rs.
<b>Respondent by:</b>	Shri Ankit Jain, Sr. DR

<b>Date of Hearing</b>	16.07.2024
<b>Date of Pronouncement</b>	24.07.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order 20.10.2022 passed for Assessment Year 2014-15.

2. The Assessee has taken the following grounds of appeal:-

*“1.1 The order passed by Under Section.250 passed on 20.10.2022 by NFAC [CIT(A)], Delhi (for Short "CIT(A)" dismissing the appeal on the ground of non-compliance to the notices of hearing is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The ld. CIT(A) has grievously erred in law and or on facts in holding that the appellant was not interested in pursuing the appeal in view of the non-response to the notices issued under Section 250.*

*1.3 That in the facts and circumstances of the case as well as in law, the Id. CIT(A) ought to have appreciated that there was a sufficient cause for failure to*

*make compliance to the alleged notices of hearing issued by it. There was a sufficient cause for so-called non-compliance to the said notices.*

*2.1 The ld. CIT(A) has grievously erred in law and or on facts in not considering the appeal on its merits because the provisions of sec.250 requires the CIT(A) to dispose off the appeal on merits of the case.*

*2.2 The ld. CIT(A) has failed to appreciate that in view of the Form No. 10 and 10B obtained before the date for filing the return, the disallowance of exemption under Section 11(2) of Rs.1,59,36,361/- towards accumulation or set apart of income was not justified.*

*2.3 That the in the facts and circumstances of the ld. CIT(A) ought to have allowed the accumulation of income of Rs. 1,59,36,361/-.*

*3.1 The appellant states that there is a sufficient cause for condonation of delay in presenting this appeal and the application with evidence will be produced during the course of hearing of this appeal, so that the delay may kindly be condoned.”*

3. At the outset, we observe that there is a delay of 458 days in filing of the present appeal by the assessee before us. The assessee has filed an application for condonation of delay, along with an affidavit in which it was submitted that the applicant is a public charitable trust which is duly registered under the Bombay Public Trust act, 1950 as well as Income-tax Act, 1961. It was established under the Memorandum on 23.01.2005. The applicant trust is engaged in providing medical relief to the needy and downtrodden people in the mofussil area at Village Vahera Tal Borsad, Dist. Anand by running a hospital named "Shraddha Hospital". The entire working of the trust as well as the hospital was looked after under the guidance of one Dr. Paresh Patel. However, he was diagnosed multiple cardiac disorders and also went through angiography and angioplasty on 04.01.2023 with drug eluting stent. He also underwent treatment at Cleveland Clinic USA for the cardiac problem. He was at USA during the period February, 23 to 29.07.2023 (as per Passport). Thereafter, he was admitted at Zydus Hospital Anand with the complaint of shortness of breath on 02.02.2023 and succumbed to death on 04.10.2023. It

was further submitted that the entire activities of the applicant trust and the hospital were exclusively looked after by him since many years and his death created a void which was difficult to fill up because the rules and regulations of the appellant trust required a President who has necessary qualification and medical knowledge, apart from interest in the institution to devote his full time with passion and devotion. Recently, the applicant trust has made appointment of the President in the meeting held in December, 2023 who on taking stock of the pending matters noticed that no action was taken in respect of the order passed by NFAC [CIT(A)] dismissing the appeal of the trust in confirming a huge demand of Rs.68,86,026/-. Further, the Counsel for the assessee submitted that there is a prime facie case in favour of the assessee on merits and if given an opportunity, the assessee is confident that he would succeed on merits. Accordingly, the Counsel for the assessee submitted that there was a genuine and bona fide reasons for delay in filing of the present appeal, and submitted that looking into the instant facts, the delay in filing of the present appeal may be condoned in the interest of justice. On going to the application for condonation of delay filed by the assessee/applicant and the fact that the principal person behind the running of the assessee/applicant Late Shri Paresh Patel trust was suffering from multiple cardiac disorders and after undergoing various treatment finally expired, we are of the considered view that there was a genuine and bona fide reason for the delay in filing of the present appeal. Accordingly, in the interest of justice, the delay in filing of the present appeal is hereby condoned.

4. On merits, the facts of the case are that there was a delay in filing Form 10 by the assessee, which was filed by the assessee on 08.03.2016 for the impugned assessment year, as against the due date of 30.11.2014 i.e. before the

due date of filing of return of income. Accordingly, admittedly in the case of the assessee, there was a delay of approximately one and half years in filing of Form 10, as a result of which the assessee's claim for deduction under Section 11 of the Act was made by the CPC in the intimation passed under Section 143(1) of the Act. The assessee/applicant trust filed appeal before Ld. CIT(Appeals), and again despite issuance of several notices, since the assessee failed to appear before Ld. CIT(Appeals), he dismissed the appeal of the assessee with the following observations:

**“3. Decision:**

*As per record, the appeal was fixed for hearing by issue of notice u/s 250 of the Income Tax Act dated 28.07.2022 which was sent through E-mail. In response there was no compliance on behalf of the appellant. Further, case was re-fixed for hearing by notice/letter issued dated 05.09.2022 and 17.10.2022. In response again there was no compliance on behalf of the appellant on the said date. However, on the above given dates again neither reply nor any adjournment application was filed by the appellant.*

**3.1** *From the above, it is apparent that the appellant has deliberately not complied with the notices issued by this office and kept on asking for time without any valid reason. Hence, it is apparent that appellant is not interested in pursuing this appeal. Hon'ble Supreme Court has also observed in the case of CIT vs. B.N. Bhattacharya (118 ITR 461) that “preferring in appeal means more than formally filing it but effectively pursuing it”. It means, if the appellant is not pursuing the appeal without any reasonable cause, it may be presumed that he may not be interest in taking the issue seriously before the appellate authority or he may not be able to substantiate the grounds taken in the appeals.*

**3.2** *The appeal of the appellant is against assessment order u/s 143(1) of the Income Tax Act, 1961. Though the appellant had appealed against the additions made by the Assessing Officer he did not comply with the notices of hearings of the appeals from the undersigned. Under the circumstances I am compelled to believe that the appellant has nothing to submit against the addition made by the Assessing Officer. The same therefore is confirmed.*

**4.** *In the result, the appeal is dismissed.”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) dismissing the appeal of the assessee. Before us, the submissions of the Counsel for the assessee were two-fold. Firstly, the Counsel for the assessee submitted that the delay in filing of Form 10 was for genuine and bona fide reasons and it was delayed due to the ill-health of the principal person in charge of operations of the assessee/applicant trust. The principal person was managing the assessee/applicant trust was suffering from multiple cardiac issues, and after going several operations, he finally expired in 2023. It was for the aforesaid reasons that there was delay in filing of Form 10. Secondly, even on merits, the Ld. Counsel for the assessee submitted that there is a prima facie case in favour of the applicant trust in as much as the exemption in respect of accumulation of income has been rejected for belated filing of Form 10 and Form 10B. It is now well settled position in law in view of the decision of Hon'ble Gujarat High Court in case of **Association of Indian Panel Board Manufacturer vs. DCIT in R/Tax Appeal No. 655 of 2022**, wherein it was held that filing of audit report though is a substantive requirement but not the mode and stage of filing, which is procedural. Once the Audit report in Form 12B is filed and is available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.

6. In response, the Ld. DR placed reliance on the observations made by the Ld. CIT(Appeals) in the appellate order.

7. We have heard the rival contentions and perused the material on record. On going to the facts of the instant case, we are of the considered view that the

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assessee has made out a reasonable case on merits and looking into the facts and circumstances as pointed out before us for non-appearance before Ld. CIT(Appeals), we are of the considered view that this is a fit case where the matter may be restored to the file of Ld. CIT(Appeals) for de novo consideration, after giving due opportunity of hearing to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

<b>This Order pronounced in Open Court on</b>	<b>24/07/2024</b>
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**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 24/07/2024

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad