

IN THE INCOME TAX APPELLATE TRIBUNAL, "E" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI RENU JAUHRI, ACCOUNTANT MEMBER

I T A. No. 987, 988 & 989/MUM/2024
(A.Y. 2016-17, 2017-18 & 2015-16)

Hemendra Pranjivan Bosmiya, 2/D, Agarwal Residency, Shankar Lane, Near Adarsh Dairy, Kandivali (E), Mumbai-400067.	Vs	ACIT Circle- 2, Thane Ashar I.T Park, 6 thFlr,Road.No.162, Wagle Estate, Thane-400604.
PAN/GIR No. AARPB0677P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	None
Revenue by	Shri Biswanath Das.CIT DR

सुनवाई की तारीख/Date of Hearing	26.06.2024
घोषणा की तारीख/Date of Pronouncement	27.06.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The Three appeals are filed by the assessee against the separate orders of National Faceless Appeal Centre (NFAC), Delhi / (CIT(A) passed u/sec 143(3) and U/sec 250 of the Act.

2. Since issues involved in these three appeals are common and identical, hence they are clubbed, heard and a consolidated order is passed.

3. At the time of hearing, it was brought to the knowledge of the bench that there is a delay of 506 days in filing these appeals before the Hon'ble Tribunal. The Assesse has filed an affidavit substantiating the facts for condonation of delay and we consider it is appropriate to refer to the notarised affidavit of the assessee read as under:

"I HEMENDRA PRANJIVAN BOSMIYA (PAN : AARPB0677P) an adult inhabitant aged around 47 years currently residing at Building 2A,D-1504, Agarwal Residency, Shankar Lane, Near Adarsh Dairy, Kandivali West, Mumbai 400067 do hereby solemnly state and declare as under :-

1. I say that I am engaged in the business of Builders and Developers under the name and style of my proprietary concerns M/s. Rashmi Properties, M/s. Rashmi Housing, M/s. Rashmi Food & Beverages and M/s. Tanmay Properties operating from shop no. 1-2, Building No.A-1, Shanti Vihar, Opp. Hardik Palace, Thane, Maharashtra, Pin code- 401107 since last 25 years.

2. I say that I am the director of Rashmi Housing Private Limited registered under the Companies Act 2013 having corporate identification no. U7010MH2003PTC139150 with the Registrar of Companies, Maharashtra State, Mumbai under Ministry of corporate affairs, Govt. of India.

3. I say that the aforesaid company was engaged in the business of Real Estate Developers and builders since 2003 in Mumbai, Mira Bhayender and Thane Region in the state of Maharashtra.

4. On Account of huge Borrowings, debts and liabilities, the said company started facing financial problems in timely repaying their debts, liabilities and borrowings since 2015-16 and almost became insolvent/bankrupt in the financial year 2015- 16. All the assets of the said company were hypothecated to the bankers and other lenders as evident from the statement of company information downloaded from the

website of Ministry of Corporate affairs., Govt. of India showing the charges created against the property and assets of the company.

5. As regards my personal state of affairs, even personally I had huge borrowings and debts as appearing in my personal balance sheet and was not able to honor my financial commitments due to financial problems. Further I had also given personal guarantee against the debts and borrowings in the aforesaid corporate entity M/s Rashmi Housing Pvt. Ltd.

6. Hon. National Company Law Tribunal (The NCLT) Mumbai Bench vide their order dated 14/12/2018 in the case of the aforesaid Company RASHMI HOUSING PRIVATE LIMITED held that the said Corporate Debtor has defaulted in repaying the loan to the tune of Rs. 26,23,91,596/- and accordingly the Hon. NCLT appointed Insolvency Resolution professional under Insolvency and Bankruptcy Code. (Exhibit-1)

7. Since I had given the personal guarantee against the corporate debts/ borrowings in Rashmi Housing Pvt. Ltd., Hon. NCLT Mumbai Bench Court III vide their order dated 08/11/2021 appointed Insolvency Resolution Professional to enforce the claim of Rs. 34,35,48,668/- being the amount of outstanding due to the claimant from RASHMI Housing Pvt. Ltd. (Exhibit-2)

8. As mentioned above, accordingly I was in tremendous mental stress and pressure owing to financial difficulties since the financial year 2015-16. Even there was no hand holding from any of my friends and relatives in such tough circumstances. Even the Tax Professionals, Accountants and Advocates were not ready to help me out.

9. All the above narrated issues and problems contributed to my non-attendance in the Appeal proceedings before the Hon. CIT Appeals on timely basis which resulted into the dismissal of appeals for non-prosecution and non-attendance in the Appeal Proceedings.

10. All my appellate orders from CIT (Appeals) NFAC Delhi for Assessment year 2015-16, 2016-17 and 2017-18 dt. 16/08/2022 were communicated to me on Portal by 16/08/2022 and therefore I was required to file the appeal

before Hon. ITAT Mumbai within 60 days expiring on 15/10/2022.

11. All these appeals for Assessment year 2015-16, 2016- 17 and 2017-18 before Hon. ITAT are filed on 28/02/2024 hence there is a delay of 501 days in filing the present appeals.

12. As stated earlier due to the continuous financial problems on account of huge debts and borrowings and simultaneous insolvency/bankruptcy proceedings going on before the NCLT Mumbai, I could not present these appeals within the prescribed time limit of 60 days. If the delay of 501 days in filing these appeals is not condoned by the Hon. ITAT., Mumbai the same is going to cause huge prejudice and undue hardship to me as these are all high demand appeals wherein huge additions and disallowances are made by the Ld. Assessing officer.

*13. I say and submit that there are all the chances that almost all the additions and disallowances made by the Ld. Assessing officer in all the Assessment years 2015-16, 2016- and 2017-18 are likely to be deleted on merits and/or legal * GO grounds.*

Brief summary of year wise additions/disallowance are as under:

<i>A.Y</i>	<i>Returned Income</i>	<i>Addition / Dis.</i>	<i>Assessed Income</i>	<i>Demand</i>
<i>2015-16</i>	<i>1,15,55,630</i>	<i>12,46,80,000</i>	<i>13,62,35,630</i>	<i>5,69,46,790</i>
<i>2016-17</i>	<i>89,35,150</i>	<i>4,22,56,783</i>	<i>5,11,91,933</i>	<i>2,45,10,018</i>
<i>2017-18</i>	<i>82,64,400</i>	<i>5,68,47,991</i>	<i>6,51,12,391</i>	<i>3,13,84,702</i>

Merits on the additions still persist hence it needs to be pursued. Majority of the additions and disallowances are likely to be deleted on legal and factual Grounds e.g. The Notice u/s 143(2) for A.Y. 2015-16 has been issued beyond the time limit prescribed u/s 143(2). Hence the entire assessment based on the same could not sustain on jurisdictional error. Further in the same year the Ld. AO while computing the capital gain on sale of Plot has taxed the gross sales consideration of Rs. 12,00,00,000 received on sale of plot without granting the deduction of Index cost of acquisition despite the fact being brought to his knowledge. Likewise the

Ld AO in the Assessment year 2016-17 has estimated business income of Rs. 3,12,61,046/- at the rate of 10% on WIP of Rs. 31,26,10,460/-without examining the opening WIP. These kinds of estimated addition are required to be restricted to the additions to WPI during the year only. Further in A.Y. 2017-18 the Ld. AO has disallowed the interest of Rs. 4,21,37,254/- paid on the business loans taken by Assessee merely because there were some interest free advances given by the Assessee.

14. Moreover all the appeals are dismissed by the Hon. CIT Appeals, NFAC Delhi merely for non-prosecution and non attendance by me, without adjudication of the grounds of appeal on merits as required by section 250(6) of the IT Act., 1961 and therefore it is humbly prayed to your honour that these appeals may be remanded back to the file of CIT ppeals NFAC Delhi for fresh adjudication on merits after affording an appropriate opportunity of being heard.

15. I undertake to fully co-operate in the Appellate and/or Assessment proceedings before The Hon. CIT Appeals and/or Assessing officer in the fresh Appellate or Assessment proceedings and shall not seek adjournments except for compelling reasons or unavoidable circumstances.

16. This affidavit is being prepared for producing the same before the Hon. ITAT Mumbai for condonation of delay in filing the appeals against the appellate orders passed by Hon. CIT Appeals NFAC Delhi for A.Y. 2015-16, 2016-17 and 2017-18.

Whatever stated above is true and correct to the best of my knowledge, information and belief.

Solemnly affirmed at this 29 day of February 2024”.

4. We considering the facts, provisions and the contents of the affidavit found that there is a reasonable cause explained and there is no benefit is derived in causing delay in filing appeal before the Honble Tribunal. Further the Honble High Court Of Bombay in the case of Vijay Vishin

Meghnani & Anr Vs. DCIT & Anr (398 ITR 0250)(Bombay)
has observed under;

“Appeal-Condonation of Delay-Claim for deduction under Section 80-0 made by Assessee was disallowed by AO for Assessment Year 1993-94 and confirmed by the Commissioner of Income Tax (Appeals)-Against order of Commissioner, assessee preferred appeal before Tribunal-Tribunal restored matter back to file of AO for Assessment Year 1993-94-AO passed order allowing claim under that section of the I.T. Act, 1961-Assessee preferred rectification application to AO to rectify his order for Assessment Year 1994-95 and Assessment Year 1996-97-Rectification application was rejected by AO-CIT(A) upheld order of AO-Assessee filed application for condonation of delay in filling appeal against order of CIT(A)—Tribunal held that assessee simply put responsibility for delay on Revenue- Tribunal dismissed two appeals filed by assessee holding that same as barred by limitation-Tribunal held that delay of 2984 days in filling appeal could not be condoned-Held, Supreme Court in case of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and others held that legal advice tendered by a professional and litigant acting upon it one way or other could be sufficient cause to seek condonation of delay and coupled with other circumstances and factors for applying liberal principles and then said delay can be condoned-None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate Authority found that litigant deliberately and intentionally delayed filing of appeal-Tribunal though aware of these principles but possibly carried away by fact that delay of 2984 days was incapable of condonation-In process Tribunal went about blaming assessee and professionals and equally Department-Tribunal's order did not meet requirement set out in law-Tribunal completely misdirected itself and had taken into account factors, tests and considerations which had no bearing or nexus with issue at hand-Tribunal, therefore, erred in law and on facts in refusing to condone delay-Explanation placed on affidavit was not contested nor Court found that from such explanation, High Court could not arrive at conclusion that assessee was at fault, he intentionally and deliberately delayed matter and had no bona fide or reasonable explanation for delay in filing

proceedings-High Court condoned delay of 2984 days in filing appeals-Assessee's Appeals allowed. Held “

5. Similarly the Hon'ble Supreme Court in *B. Madhuri Goud v. 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.”*

6. 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."

7. We respectfully follow the observations and ratio of the decisions of Hon'ble Supreme Court and Honble High Court and find that the delay in filing the appeal before the Honble Tribunal by the assessee is supported with sufficient cause and a pragmatic approach should be considered for condonation of delay and accordingly the delay is condoned and we admit the appeals.

8. We shall take up ITA No. 989/Mum/2024, A.Y 2015-16 as lead case and facts narrated. The assessee has raised the following grounds of appeal:

1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi erred in dismissing the grounds of appeal for non -prosecution and non- attendance by the appellant without disposing off each ground of appeal on merits, without stating the reasons for determination and the decisions thereon in terms of section 250(6) of the Income Tax Act., 1961,

The Appellant therefore request your honour to set aside the appellate order passed by the Hon. CIT (A) AND remand back the matter to the file of Hon. CIT(A) for fresh adjudication on merits.

2. On the facts and circumstances of the case and in law the Ld. CIT (Appeals), NFAC, Delhi while dismissing all the grounds Hence, M of appeal ought to have considered the submissions made by the appellant before the Ld. Assessing officer and reasons for respective disallowances /additions as mentioned and elaborated in the Assessment order by the Ld. Assessing officer.

The Appellant therefore request your honour to remand back the matter to the file of Hon. CIT(A) for fresh adjudication on merits with a direction to grant one final opportunity to the assessee to substantiate its case and decide the grounds as per facts and law.

3. On the facts and circumstances of the case and in law the Ld. CIT (Appeals), NFAC, Delhi erred in confirming the Assessment order passed by the Ld. Assessing officer u/s 143(3) of the Act without issuing the statutory Notice u/s 143(2) within the statutory time limit of 6 months from the end of financial year in which Return of Income is filed i.e. ROI was filed on 29/10/2015 whereas the Notice u/s 143(2) was issued on 21/10/2016 as mentioned in the Assessment order.

The Appellant therefore prays to quash the impugned assessment order being completely without jurisdiction, void ab initio and bad in law.

4. On the facts and circumstances of the case and in law the Ld. CIT (Appeals), NFAC, Delhi erred in upholding the addition

of Rs. 46,80,000/- u/s 56(2)(vii)(b)(ii) of the Act on account of difference between the purchase value of Plot at Rs. 1,63,80,000/- and the stamp duty value thereof at Rs. 2,10,60,000/- made by the Ld. AO

5. On the facts and circumstances of the case and in law the Ld. CIT (Appeals), NFAC, Delhi erred in confirming the addition of Rs. 12,00,00,000/- being the gross sale consideration on the sale of property being plot of land with structure thereon without allowing the cost of acquisition/Indexed cost of acquisition of the property purchased on 03/06/2008 as deduction u/s 48/49 of the IT Act., 1961

6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other

9. The brief facts of the case are that, the assessee is engaged in the business and has filed the return of income for the A.Y 2015-16 on 29.10.2015 disclosing a total income of Rs.1,15,55,630/-. Subsequently the case was selected for limited scrutiny under CASS to verify (i)Income / Capital gain on sale of land or building (ii)Sale of property mismatch and (iii)Sales turnover mismatch, sundry creditors, unsecured loans. Subsequently the Assessing Officer (AO) has issued notice u/sec 143(2) and U/sec 142(1) of the Act. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the information in respect of issues raised in the scrutiny assessment. The AO on perusal of the financial statements and the AIR transactions found that the assessee has purchased a plot of land for a consideration of Rs.1,63,80,000/- but the market value as per SRO for stamp duty purpose is Rs.2,10,60,000/-.The AO has

considered the difference in the purchase price and the value as per SRO for the stamp duty purpose and has invoked the provisions of Sec. 56(2)(vii)(b)(ii) of the Act and made an addition of differential amount of Rs.46,80,000/-. Similarly on the second disputed issue, the assessee has sold plot of land in Ghodbunder, Thane District Maharashtra for a consideration of Rs.12 Crores in the F.Y.2014-15 and whereas the assessee has purchased the plot for a consideration of Rs. 2,51,00,000/-on 3-06-2008. In the course of assessment proceedings, the A.O found that the assessee has not disclosed the profit arising on sale of plot in the return of income filed for A.Y 2015-16 nor in the subsequent years. The assessee was called to explain and substantiate with the evidences regarding the purchase of plot in the F.Y.2008-09. Since there was no compliance to the directions of the A.O, finally made addition of entire sale consideration of Rs.12 Crores and assessed the total income of Rs.13,62,35,630/- and passed the order u/sec 143(3) of the Act dated 30.12.2017.

10. 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 since there was no compliance by the assessee to notices.. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal

before the Hon'ble Tribunal. At the time of hearing none appeared on behalf of the assessee and the Ld. DR supported the order of the CIT(A).

11. We heard the Ld.DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on 11.07.2018, 24.08.2018, 09.07.2019, 29.07.2019, 03.10.2019, 15.01.2020, 02.02.2021, 11.03.2022 & 07.07.2022 referred at Page 3 Para 4 of the order but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. 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 and the assessee should be provided

adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the Appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

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

ITA No. 987 & 988/Mum/2024, A.Y 2016-17 & 2017-18

13. As the facts and circumstances in these appeals are identical to ITA No 989/Mum/2024, for the A.Y 2015-16 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for these appeals also. Accordingly, we allow the grounds of appeal of the assessee for statistical purpose.

14. In the result, the three appeals filed by the assesses are allowed for statistical purposes.

Order pronounced in the open court on 27.06.2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 27/06/2024

KRK.PS

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-