

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member And  
Shri Makarand Vasant Mahadeokar, Accountant Member**

**ITA No: 341/Ahd/2024  
Asst. Year 2015-16**

Govindbhai Hirabhai Bharvad, Bhoja Bharwad no Bhatho Bharwad Vas, Vasna, Ahmedabad Gujarat-380007  <b>PAN: ACJPB0750H (Appellant)</b>	Vs	Income Tax Officer, Ward-6(1)(1), Ahmedabad  <b>Respondent)</b>
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**Assessee Represented: Shri Palak Pavagadhi,CA  
Revenue Represented: Smt. Trupti Patel, Sr. D.R.**

Date of hearing : 22-08-2024  
Date of pronouncement : 28-08-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Legal Heir of the deceased assessee as against the exparte appellate order dated 27.01.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), refusing to condone the delay of 104 days in filing the appeal by the assessee arising out of the reassessment order passed under section 147 of

the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2009-10.

2. The brief facts of the case is that the assessee is an individual deriving income under the head House Property, Capital Gain and Other Sources. For the Asst. Year 2015-16, appellant filed his original Return of Income declaring total income of Rs.6,07,960/-. Assessee's case was reopened by issuing a notice u/s. 148 dated 22.03.2021, on the basis of information that there were huge amount credited in his bank account including cash to the tune of Rs.1,37,55,000/-. In response to the notice, assessee filed his Return of Income on 10.03.2022 with e-filing Acknowledgement No. 320235420100322. Copy of the said return filed is placed in Paper Book at Page Nos. 15 to 28. However the Assessing Officer held that no return was being filed by the assessee in response to the 148 notice and thereby proceeded to make Best Judgment Assessment u/s. 144(1) of the Act, thereby made an addition of Rs.1,37,55,000/- as unexplained money and also initiated penalty proceedings vide order dated 29.03.2022. Due to ill health of the assessee, Post Covid-19 he could not attend the notices issued to his previous consultant. By changing the new consultant, assessee filed an appeal with a delay of 104 days and explained the delay and requested to condone the same. However, Ld. CIT(A) without affording any opportunity of hearing refused to condone the delay and thereby dismissed the assessee appeal.

2.1. Thus assessee pleaded Supreme Court Judgment in the case of Collector, Land Acquisition Vs. Mst. Katiji 1987 taxmann.com

1072, analyzed the provisions of law qua, limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice- that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is requires to be adopted on principle as ordinarily a litigant does not stand to benefit by lodging an appeal late. Further 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. The Apex Court further held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it can remove injustice and is expected to do so.

2.2. Further Hon'ble Supreme Court in N. Balakrishnan v. M. Krishnamurthy 2008 (228) ELT 162, while condoning the delay of 883 days in filing an application for setting aside the exparte decree held "That the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance

substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor."

3. Ld. Sr. D.R. appearing for the Revenue could not contravene the above submission of the assessee.

4. We have given our thoughtful consideration and perused the materials available on record. It is seen from the exparte assessment order, the Ld. A.O. failed to consider the Return of Income filed by the assessee in response to the 148 notice and thereby passed exparte assessment order. When the appeal was filed with a delay of 104 days explaining the ill-health with doctor certificates, the delay in filing the appeal was not condoned by Ld. CIT(A) and also without giving opportunity of hearing to the assessee, the appeal was dismissed. On perusal of records, we found that there is some reasonable medical cause in filing the appeal within time stipulated under the Act by the assessee. Therefore in the interest of justice, we deem it fit to set aside the matter back to the file of Assessing Officer with a direction to pass fresh assessment order by giving proper opportunity of hearing to the assessee. Needless to say, the assessee should co-operate by filing all the necessary materials before the Jurisdictional Assessing Officer to pass fresh reassessment order in accordance with law.

5. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 28-08-2024

**Sd/-**  
**(MAKARAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 28/08/2024**

**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