

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No. 193/Srt/2024 (Assessment Year 2011-12)
(Physical hearing)

Devendra Munnarram Vijay, House No. 406, Platinum Tower, Peer Muchalla, Dera Bassi, SAS Nagar, Mohali, Punjab-140603. PAN No. ACCPV 1120 C	Vs.	I.T.O., Vapi Circle, Vapi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Suresh K. Kabra, C.A.
Department represented by	Shri Vinod Kumar, Sr.DR
Appeal instituted on	20/02/2024
Date of hearing	01/07/2024
Date of pronouncement	27/08/2024

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)/Addl/JCIT(A) Jodhpur, [in short, the Id. CIT(A)] dated 17/01/2024 for the Assessment Year (AY) 2011-12. The Id CIT(A) dismissed the appeal in limine by not condoning the delay in filing appeal before him. Thus, apart from merit, primary issue in this appeal is whether, the delay in filing first appeal was liable to be condoned or not.
2. Rival submissions of both the parties have been heard and record perused. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the assessee is a salaried employee, during the financial year (FY) 2010-11, the assessee was employed with ACG Associated Capsules Private Limited and remained in their employment up to 27/04/2010. Later on

he joined the services of Mission Vivacare Limited Mumbai, in quality control department. The assessee filed his return of income declaring total income at Rs. 25,36,120/- on 01/08/2011 for A.Y. 2011-12. The assessee while filing return of income, claimed credit of TDS of Rs. 6,33,281/-. Such TDS credit comprises of (i) TDS Credit of Rs. 2,12,764/- pertaining to ACG Associated Capsules Private Limited, (ii) TDS Credit of Rs. 4,19,428/- pertaining to Mission Vivacare Limited and (iii) other TDS credit of Rs. 1,089/- pertaining to Axis Bank Limited under Section 194(A) of the Income Tax Act, 1961 (in short, the Act). The return of income was processed under Section 143(1) of the Act by the CPC, Bangalore vide intimation dated 22/03/2013. In the intimation, TDS credit of only of Rs. 2,58,853/- was allowed. A demand of Rs. 4,81,880/- was raised in the intimation dated 22/03/2013. The Id. AR of the assessee submits that the assessee never received such intimation either by post or by e-mail. The assessee for the first time, came to know about tax liability when he received a demand notice /letter on 02/11/2018 of Rs. 4,81,880/-. On receipt of said demand notice/letter, the assessee approached jurisdictional Assessing Officer (AO) i.e. ITO, Daman. And on enquiry from AO, the assessee came to know that TDS by Mission Vivacare Limited is reflecting only Rs. 45,000/- in Form AS-26. However, as per Form-16, the TDS of Rs. 4,19,418/- was deducted by his employer Mission Vivacare Limited. On approaching and making enquiry from Mission Vivacare Limited, the assessee came to know that the company incorrectly entered PAN No. ALIPG9864H instead of PAN No. ACCPV1120C against the amount of TDS of Rs. 3,74,428/-. The assessee obtained such information in writing from his employer and again requested the AO to allow

/give credit of Rs. 3,74,428/-. Such application for allowing credit was filed before AO on 21/11/2018. The assessee made a prayer to the Assessing Officer to rectify the mistake and correct the demand. However, the Assessing Officer stated that time period of rectification has lapsed and asked the assessee to file appeal before the Id. CIT(A). The assessee filed application before the Id. CIT(A) on 10/04/2023 with application for condonation of delay. The Id. AR of the assessee submits that the assessee was not aware about intimation issued by the CPC rather came to know only when a demand notice in November, 2018, when he was served with demand of tax. The assessee immediately approached the Assessing Officer for taking corrective measure. The assessee being an ordinary citizen was running from pillar to post for redressal of his grievance. The copy of application filed before AO alongwith e-mail communication and correspondence with CBDT for redressal of his grievance, is placed on record. The Id. AR of the assessee submits that the TDS which is incorrectly deposited against the PAN number of different employee, who has not claimed set off or TDS credited against his income as he was not having such taxable income and it can be rectified by the Assessing Officer. Necessary TDS certificate and letter from erstwhile company Mission Vivacare Limited is also placed on record. The Id. AR of the assessee submits that alongwith appeal before CIT(A), the assessee filed application for condonation of delay. The Id. CIT(A) though recorded the contention of assessee about condonation of delay, however, the plea of assessee in condoning the delay was not allowed by the Id. CIT(A). Thus, the appeal of assessee was dismissed in limine by holding as not maintainable. The Id. AR of the assessee submits that the assessee has

good case on merit. The assessee is individual and has no knowledge against demand created by the CPC Bangalore. TDS was duly deducted by his employer though; it was wrongly credited in PAN number of other employee.

3. The Id. AR of the assessee submits that the Hon'ble Gujarat High Court in Kartik Vajaysinh Sonavane Vs DCIT (2021) 132 taxmann.com 293 (Gujarat) held that where TDS has been deducted by the employer of the assessee, it is always open for the department to recover the same from the said employer and credit cannot be denied to the assessee. The Id. AR of the assessee submits that the assessee is facing double deduction (taxation) once the TDS was made by his employer similarly the demand is credited against the assessee by department. The Id. AR of the assessee prayed that delay in filing appeal before Id CIT(A) was not intentional or deliberate rather due to bonafide reasons and beyond the control of assessee. There is no malafide or deliberate delay on the part of assessee in approaching the Id. CIT(A). The Id. AR of the assessee submits that the delay in filing appeal before the Id. CIT(A) may be condoned and appeal of assessee may be restored to the file of Assessing Officer with specific direction to allow the credit of TDS already deducted from the salary of assessee. The Id. AR of the assessee relied on the following case law:

- ITA No. 288/Coch/2017 M/s Midas Polymer Compounds Pvt. Ltd. Vs ACIT dated 25/06/2018.
- Hanumantappa Giryapur Manjunatha Vs ITO (2024) 159 taxmann.com 1496 (Bangalore Trib)

4. On the other hand, the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue supported the order of Id. CIT(A). The Id. CIT-DR for the revenue submits that there is inordinate delay in filing

appeal before the Id. CIT(A). The assessee has not explained the delay in filing appeal, thus, appeal of assessee was rightly not admitted for adjudication on merit. To support his view, the Id. CIT-DR for the revenue relied upon the following case laws:

- Puneet Rastogi Vs Pr.CIT (International Taxation) (2023) 148 taxmann.com 362 (Delhi)
- Royal Stitches (P) Ltd. Vs DCIT (2023) 156 taxmann.com 361 (Madras) and
- Majji Sannemma Vs Reddy Sridevi in Civil Appeal No. 7696 of 2021-SC.

5. We have considered the submissions of both the parties and have perused the orders of the lower authorities carefully. We have also deliberated on various documents filed on record in the form of paper books as well as on various case laws relied by both the parties. We find that the Id. CIT(A) has not considered the case of assessee on merit for the reasons that the delay in filing appeal before him, was not condoned. Therefore, first we shall consider the plea of assessee in condoning the delay in filing appeal before first appellate authority. Before us, the Id AR of the assessee vehemently argued that the assessee was not aware about the demand created by CPC, on the basis of mismatch in TDS in Form-26AS. We find that the case of assessee is that out of total TDS of Rs. 6,33,281/-, out of which a credit of Rs.3,74,428/ was not allowed as it was wrongly entered against PAN No. ALIPG9864H instead of PAN No. ACCPV1120C (Assessee) thus, the CPC, Bangalore vide in its intimation dated 22/03/2013 allowed TDS credit of only of Rs. 2,58,853/- was allowed and created demand of Rs. 4,81,880/-. The cause of delay in filing first appeal was that he never received such intimation either by post or by e-mail and that for the first time, he came to know about tax liability when he received a

demand letter on 02/11/2018. From the correspondence available on record, we find that the assessee approached jurisdictional AO in Daman in November 2018 for seeking redressal of his grievances. We find that TDS by Mission Vivacare Limited is reflecting only Rs. 45,000/- in Form AS-26. However, as per Form-16, the TDS of Rs. 4,19,418/- was deducted by his employer Mission Vivacare Limited. The employer / Mission Vivacare Limited, has certified that they incorrectly entered PAN No. ALIPG9864H instead of PAN No. ACCPV1120C against the amount of TDS of Rs. 3,74,428/-. We find that the assessee made a prayer to the Assessing Officer to rectify the mistake and correct the demand, but the time period of rectification has lapsed, thus he asked the assessee to file appeal before the Id. CIT(A). The assessee filed appeal before Id CIT(A) 10/04/2023 and also application for condonation of delay. The delay in filing appeal was not condoned, resultantly the appeal of assessee was dismissed as unadmitted vide order dated 17.01.2024. We find that while deciding the plea of assessee in condoning the delay, the Id CIT(A) has not discussed the facts leading to delay, rather, simply held that there is inordinate delay in filing appeal and that the assessee has not given sufficient reason.

6. The Hon'ble Jurisdictional High Court in *Multibase India Ltd Vs ITO* (2018) 93 taxmann.com 204 (Gujarat) and in *Jayvantsinh N Vaghela VS ITO* (2013) 40 taxmann.com 491 (Gujarat) held that unless the delay is gross or intentional, melafide or deliberate, delay may be condoned. Hon'ble Apex Court in a celebrated decisions in *Collector Land Acquisition Vs Mst Katiji* (1987) 2 SCC 107 held that there is no presumption under law the delay in filing appeal is intentional. The parties do not get any benefit in filing appeal belatedly, rather

there is chance that the delay may not be condoned. It was further held that when technical consideration and cause of substantial justice and pitted against each other, the cause of substantial justice may be preferred. In the present case the assessee, as per details in Form-16 has offered entire salary for taxation along with the details of TDS by his employers, which later on discovered that part of the TDS was wrongly credited against PAN of other employee, all such details are available on record. The said other employee has not claimed the credit of such TDS. At this stage such TDS returns filed by the respective employer cannot be corrected as the time period for making such correction has lapsed. As conveyed to us, it can still be corrected by AO. Thus, with this short back ground, we find the technical considerations are actually pitted against the cause of substantial justice in the present case, coupled with the facts that from the day of information/communication about the recovery of tax, the assessee is pursuing for redressal of his grievances and took various step in bringing the evidence on record that TDS made by his employer is wrongly credited against the PAN of another employee. Therefore, we find that there is intentional or deliberate delay by assessee in filing appeal before Id CIT(A). Resultantly, the order of Id CIT(A) dated 17.01.2024 in dismissing the appeal is set-aside. The delay in filing appeal before Id CIT(A) is condoned.

7. The ratio of various decisions relied by Id Sr DR for the revenue, is not applicable on the peculiar facts of the present appeal. In Royal Stiches (P) Ltd (supra), the Hon'ble Court held that that the assessee has not given 'sufficient cause' for condoning the delay. In Punit Rastogi Vs PCIT (supra) the High Court clearly held that where NRI sought condonation of delay in filing return of

income on the grounds that being NRI, he was not aware about due date of filing return of income, and that he has no taxable income, but he was filing return of income for other years within time limit. Thus, facts of that case are totally based on different facts. In Majji Sannemma Vs Reddy Sridevi (supra), the High Court has not recorded the finding of facts there the delay was not intentional or deliberate. Thus, again at the cost of repetition, we do not find any negligence or deliberate action on the part of assessee. Rather, the plea raised by the assessee before AO as well as Id CIT(A) remained adjudicated. And if the appeal of assessee is not admitted he would be seriously prejudiced. Now advertent to the merits of the case.

8. We find that Hon'ble Jurisdictional High Court in Kartik Vajaysinh Sonavane Vs DCIT (supra) held that when TDS has been deducted by employer of the assessee, it will always be open for department to recover same from said employer and credit of the same could not have been denied to assessee. We further find that despite bringing the facts on record that his employer has in fact made TDS while making payment of salary and that such TDS is wrongly credited in PAN of other employee, who had not claimed such TDS and the same is lying in the treasury of revenue. The Id AR of the assessee vehemently urged that such wrong entry can still be corrected by AO, therefore, the matter is restored back to the file of AO to reconsider all such facts and initiate corrective step for allowing credit of the TDS shown in Form-16 of assessee for relevant assessment year. The AO shall also take necessary step for making correction of TDS which is wrongly credited to the PAN of other employee as recorded in earlier paras of this order. The AO is also directed to consider the

decision of Hon'ble Jurisdictional High Court in Kartik Vajaysinh Sonavane Vs DCIT (supra) while giving effect of this order. Needless to direct that before passing the order afresh the AO shall allow reasonable opportunity to the assessee. The assessee is also directed to provided all details to the AO with necessary evidence as has been filed before this Tribunal. With these directions, the grounds of appeal raised by the assessee are allowed for statistical purpose.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order announced in open court on 27th August, 2024.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 27/08/2024

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat