

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

ITA No. 282 & 283/Srt/2024 (AY: 2011-12 & 2012-13)
(Physical hearing)

Archana Dharmesh Panchigar, 401, Tirth Apartment, Opp. Ashok pan House, Besides Rani Sati Temple, City Light, Surat-395001. PAN No. AWPPK 8028 B	Vs.	I.T.O., Ward-2(3)(7), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	None
Department represented by	Shri Vinod Kumar, Sr.DR
Date of institution of appeals	15/03/2024
Date of hearing	29/08/2024
Date of pronouncement	29/08/2024

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER

1. These two appeals by the assessee are directed against the separate orders of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] both dated 20/06/2023 for the Assessment Year (AY) 2011-12 and 2012-13 respectively. In both the appeals, the assessee has raised certain common grounds of appeal which includes the grounds against validity of reopening and addition under Section 68 of the Income Tax Act, 1961 (in short, the Act) and others minor additions. Facts in both the years are almost similar, therefore, both the appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the appeal in ITA No. 282/Srt/2024 for the A.Y. 2011-12 is treated as a "lead case". In this appeal, the assessee has raised following grounds of appeal:

- “1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, [here-in-after referred to as Ld. CIT(Appeals)] was not justified and grossly erred in dismissing the appeal which is bad- in- law and against principal of natural justice equity, thereby confirming the action of the A.O. for the order passed u/s. 143(3) r.w.s 147 of the I.T. Act, 1961 which is incomplete and also bad on facts as appelland was not provide opportunity to submit documentary evidence.*
 - 2. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. in by accepting the addition on account of unaccounted/unexplained cash and other credits u/s. 68 of the I. T Act amounting to Rs. 46,13,063/- without providing an opportunity which is incorrect and amp; bad-in- law and needs to be deleted in the interest of natural justice and equity.*
 - 3. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. in by accepting the addition on account of undisclosed short term capital gain amounting to Rs. 24,111/-.*
 - 4. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. in by accepting the addition on account of undisclosed speculative income amounting to Rs. 13,381/-.*
 - 5. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. in not justified and erred in confirming the initiated penalty proceedings u/s. 271(1)(C) r.w.s. 274 of the Act.*
 - 6. That the appelland craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal.”*
2. Perusal of record shows that the impugned order was passed on 20/06/2023, however, the appeal was filed before the Tribunal on 15/03/2024, thus, there is delay of 209 days in filing appeal before the Tribunal. The assessee has filed her affidavit for seeking condonation of delay. In the affidavit, the assessee has contended that various notices issued by the Id. CIT(A) were not received by her on the address mentioned on Form-35. The assessee was not aware about notice of hearing. The assessee came to know about passing of order through revenue officials. The assessee further, vide application dated 04/07/2024 contended that the assessee was not well and was suffering from

Bilateral Axillary Tail in her breast and was taking treatment from Shivam Hospital & Vaishali Maternity Centre, Udhna Magdalla Road, Surat. The assessee was under mental and psychological pressure, the assessee was unable to follow her normal routine work due to severe breast pain. The delay in filing is not intentional.

3. None appeared on behalf of assessee. Application for adjournment was filed from the office of Shri Dinesh M. Parekh, Chartered Accountant. Perusal of record shows that the Assessing Officer as well as Id. CIT(A) passed ex parte order for want of proper submission and evidences in response to various notices. Thus, application for adjournment was rejected and we decided to adjudicate the present appeal on the basis of material available on record and hearing the submissions of learned Senior Departmental Representative (Id. Sr. DR) for the revenue.
4. The Id. Sr. DR for the revenue submits that the assessee has not shown reasonable and sufficient cause for condoning the delay of more than 200 days. Thus, the delay in filing appeal may not be condoned. In alternative and without prejudice submission, the Id. Sr. DR for the revenue submits that in case the Bench is of the view that the assessee has shown sufficient cause for filing appeal belatedly, in such situation, the matter may be restored back to the file of Assessing Officer for passing the assessment order afresh as the assessee neither contested before the Assessing Officer nor filed any submission before the Id. CIT(A).
5. We have considered the submissions of Id. Sr. DR for the revenue and gone through the orders of the lower authorities. First we are considering the plea

of assessee for condonation of delay in filing present appeal. We find that the impugned order was passed by the Id. CIT(A) on 20/06/2023, however, the present appeal is filed on 05/03/2024, thus, there is a delay of 209 days in filing appeal. For condonation of delay, the assessee has filed her affidavit as well as application for condonation of delay. With application of condonation of delay, the assessee has also filed certain medical prescription and discharge slip of nursing home/ hospital. In the affidavit, the assessee has categorically stated that physical copy of first appellate order was not received by the assessee. In application dated 04/07/2024, the assessee contended that she was suffering from Bilateral Axillary Tail in her breast and was under severe pain and under physical and mental tension from last six months. To support her contention, the assessee has filed certain medical prescription, discharge summary from the hospital and diagnosis from Shivam Hospital & Vaishali Maternity Centre, Udhna Magdalla Road, Surat. Considering the peculiar facts of the case that the assessee was facing medical issue and was under treatment as evidenced from the various medical prescriptions filed on record. Thus, taking a liberal view, the delay in filing appeal is condoned. Now adverting to the merit of the case.

6. On merit, we find that the Assessing Officer while passing the assessment order made addition of Rs. 46,13,063/- on account of credits/deposits in bank and also made addition of short term capital gain of Rs. 24,111/- and speculation income of Rs. 13,381/-. All the additions were made for want of explanation and supporting evidences by assessee. The Id. CIT(A) confirmed the action of Assessing Officer by taking view that despite giving four

opportunities, as recorded in para 5 of his order, the assessee failed to furnish any submission. We find that the Id. CIT(A) has not passed the order on merit except confirming the action of Assessing Officer. Keeping in view that the Assessing Officer as well as Id. CIT(A) has passed the ex parte order and substantial right of assessee are involved, therefore, in our view, the assessee deserve one more opportunity to contest her case on merit. Therefore, keeping in view the principles of natural justice, the matter is restored back to the file of Assessing Officer to decide the issue afresh in accordance with law. Needless to direct that before passing the order, the Assessing Officer shall grant opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all the details and her submissions and evidences on various grounds of appeal raised by her, as soon as possible, if so desired without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

7. In the result, this appeal of assessee is allowed for statistical purposes only.

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8. We find that in this appeal, the assessee has raised similar ground of appeal. We also find that in this appeal, there is also a delay of 209 days in filing appeal before the Tribunal. The facts of this appeal is common to the facts and grounds as raised in ITA No. 282/Srt/2024 for A.Y. 2011-12, which we have restored back to the file of Assessing Officer. Therefore, keeping in view the principle of consistency on similar set of facts, the delay in filing of appeal before the Tribunal is condoned and this appeal of assessee is also restored

back to the file of Assessing Officer for deciding the same afresh with similar direction. In the result, grounds of assessee's appeal are allowed for statistical purposes only.

9. In the result, both the appeals of assessee are allowed for statistical purposes.

Order pronounced in the open court on 29th August, 2024.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 29/08/2024

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat