

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRIGIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A No.2296/Mum/2024 - A.Y. 2018-19  
I.T.A No.2297/Mum/2024 - A.Y. 2018-19  
I.T.A No.2298/Mum/2024 - A.Y. 2019-20  
I.T.A No.2299/Mum/2024 - A.Y. 2019-20

<b>Shri Hemant V More,</b> Kalyan Ravi Raj Apartment Khadakpada, Kalyan-421 301 <b>PAN :AFWPM3020K</b>	<b>vs</b>	<b>ACIT, Central Circle-3, Thane</b> Ashar IT Park, Thane
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Pritpal Singh  
Respondent by : Shri P.D.Chougule (Addl. CIT) SRDR  
  
Date of hearing : 02/09/2024  
Date of pronouncement : 03/ 09/2024

**ORDER**

**PER BENCH:**

This bunch of appeal of the assessee was filed against the common order of the Learned Commissioner of Income-tax (Appeals), Pune-11 [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Years 2018-19 & 2019-20, date of order 20.02.2024. The impugned order is emanated from the order of the Learned Assistant

Commissioner of Income Tax, CC-3, Thane (in brevity the Id. AO), the order passed for AY 2018-19, U/s 143(3), and U/s 270A of the Act on dated 09/02/2021 and 16/03/20222 respectively and for A/Y. 2019-20, U/s 144 and U/s 270A of the Act on dated 10/02/2021 and 16/03/2022 respectively.

2. All the appeals have the same nature of facts and common issues; therefore, with the consent of rival parties, **ITA No.2297/Mum/2024** is taken as lead case. The assessee has taken the following grounds:-

**ITA 2297/Mum/2024 for AY 2018-19**

*"1. On facts and circumstances of the case and in law, the learned CIT(A) has erred in passing order u/s 143(3), while intending to pass order as 144. The assessment is thus void ab initio.*

*2. On facts and circumstances of the case and in law, the learned assessing officer, has erred in alleging that appellant has not filed any details or explanation. The learned CIT(A) has erred in ignoring material at his disposal and hurriedly passed the assessment order.*

*3. On facts and circumstances of the case and in law, the learned CIT(A) has erred in Dismissing appeal citing non-payment of tax. It is a matter of fact. Not a valid ground of appeal dismissal.*

*4. On facts and circumstances of the case and in law, the learned CIT(A) has erred in Labelling appellant as non-cooperative. Without detailed evidence of non-cooperation, it is unjust to penalize the appellant solely on this basis.*

*5. On facts and circumstances of the case and in law, the learned CIT(A) has erred in Ignoring genuineness of appellant, who is a dentist by profession. Covid 19 being one of the Reason for late filing is rejected as general and lacking substance. The reasonsof financial strain and legal disputes, which genuinely hindered the timely filing of the appeal has been ignored.*

*6. On facts and circumstances of the case and in law, the learned CIT(A) has erred in Requiring affidavit as sine qua non for condonation. The CIT appeal insistence*

*on formalities without considering the substance of the appellant's arguments undermines the principles of justice and equity.*

*7. On facts and circumstances of the case and in law, the learned CIT(A) has erred in Prioritizing procedural technicalities over substantive justice. Ld CIT Appeal have violated the principles of natural justice, which require fair treatment and consideration of all relevant factors.*

*8. On facts and circumstances of the case and in law, the learned AO and CIT(A) has erred in passing order in hurry without application of mind. The order is void ab-initio and liable to be quashed.*

*9. On facts and circumstances of the case and in law, the learned CIT(A) has erred in ignoring material at its disposal and hurriedly passed the assessment order, resulting in high pitched assessment.*

*The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of appeal.”*

3. The brief facts of the case is that a survey was conducted under section 133A of the Act on 21/02/2019. The assessee declared the income during the survey. The assessment was completed under section 143(3) with the additions of Rs.53,50,378/- on the difference of profit undeclared by the assessee, disallowance of 30% of the expenses amount to Rs.1,10,44,993/- which works out to Rs.33,13,498/- and disallowance of purchases @30% on amount to Rs.1,14,74,404/- which works out to Rs.34,42,321/-. Aggrieved assessee filed an appeal before the Ld.CIT(A) with a delay of 454 days. The assessee had not complied with the notices issued by the Id. CIT(A) during the appeal proceedings. Accordingly, the appeal order was passed exparte and upheld the assessment order. Further, the assessee has not paid the admitted tax while filing the return. So, Ld.CIT(A) has passed the impugned appeal order against the assessee for

contravening section 249(3) and 249(4)(b) of the Act. Being aggrieved, the assessee filed an appeal before us.

4. When the appeal was called for hearing, the representative of the assessee filed an adjournment petition. But the adjournment petition was withdrawn, and the Id. AR proceeded for hearing. The Id. AR has mentioned that the impugned appeal orders for all assessment years are *ex parte*. The Id. AR also mentioned that considering the *Suo motu* Writ Petition of the Hon'ble Supreme Court, the Id. CIT(A) has considered the delay for 454 days and restricted the delay for 70 days. The Id. CIT(A) carefully mentioned in the impugned appeal order that the assessee has not paid the admitted tax while filing the appeal. As per section 249(4)(a), the admitted tax should be paid before filing of the appeal. The show cause notices were issued but the assessee had not complied with the said notices. For violation of Sections 249(3) and 249(4)(a) of the Act, the impugned appeal was dismissed *ex parte*. The Id. AR prayed that the appeal should be restored to the file of the CIT(A) for further adjudication *de novo*.

In our considered view, the assessee was totally non-co-operative before the Id. CIT(A) and was unable to represent the matter in respect of any of the issues related to explanation of "sufficient cause" in the issue of the limitation and also the non-payment of admitted tax. The Id. CIT(A) has not passed the order on merit. The Id. AR placed due to medical emergency the assessee was unable to comply the notices of the Id. CIT(A) and prayed to remand the matter before the Id. CIT(A). We find that the reasonable opportunity of the assessee was denied for redressal of the grievance. The Id. DR argued and had not made any objection about the prayer of the Id. AR. We are, therefore, of the opinion that interest of

justice would be sub served if the impugned order is set aside and the matters are remitted to the file of the Id. CIT(A) for consideration thereof afresh. We direct Id. CIT(A) to accept the appeal by condoning the delay. But in case of nonpayment of admitted tax, the assessee should get another opportunity of hearing before the Id. CIT(A) for explanation of correct fact. The Id.CIT(A) is directed to act as per the Act and to pass a speaking order for disposing the appeal. We are not expressing our view on the merit of the case which will impair the appeal of the assessee. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside appeal proceedings. On the other hand, the assessee should be diligent and co-operative in the appeal proceedings for quick disposal of the appeal.

5. Since the facts and circumstances in ITA Nos 2296, 2298 & 2299/Mum/2024 are identical to ITA No.2297/Mum/2024, the above decision shall apply *mutatis mutandis* to ITA Nos 2296, 2298 & 2299/Mum/2024 also.

6. In the result, all the appeals filed by the assessee bearing **ITA Nos. 2296 to 2299/Mum/2024** are allowed for statistical purpose.

Order pronounced in the open court on 03<sup>rd</sup> day of September, 2024.

Sd/-

(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 03/09/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai