

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 988/Ahd/2024  
(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>Sanjay Balvantlal Khatri</b> 962, Pedhivalo Khancho, Jahapanah Ni Pole, Kalupur, Ahmedabad, Gujarat, 380001	<b>बनाम/ Vs.</b>	<b>The ITO</b> Ward-7(2)(2), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMAPK6283D		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri M. K. Patel, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Rohit Aasudani, Sr. DR

<b>Date of Hearing</b>	02/09/2024
<b>Date of Pronouncement</b>	05/09/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the assessee against the order of the Addl./JCIT(A)-9, Mumbai, (in short ‘the JCIT(A)’), dated 27.03.2024 for the Assessment Year 2012-13.

2. The assessee has taken following grounds in this appeal:

“1. **Rejection of Appellant's request for condonation of delay in filing of Appeal**

1. The ld. JCIT (Appeals) has grievously erred in rejecting the appellant's application requesting condonation of genuine, bonafide and non-deliberate

*delay in filing of appeal. The appellant states that the Id. CIT(A) though having cited many decisions of the Hon'ble Supreme Court and other courts of law observing that the limitation harshly affects the rights of a party and that a pedantic approach must not be adopted while condoning the delay in filing of appeal and explanation of each day's delay should not be taken literally, proceeded to reject the appellant's application.*

2. *The appellant humbly requests your honour's to direct the JCIT (Appeals) to allow the application of the appellant requesting to condone delay in filing of appeal to meet the ends of justice and then decide the appeal on merits of the additions made as per the written submissions filed and facts available on record. Accordingly, the appellant prays to quash and set aside the impugned order dated 27/03/2024 passed by the JCIT (Appeals) for A.Y.2012-13.*
3. *The Id. JCIT (Appeals) failed to appreciate that the Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the Hon'ble Apex Court as well as other courts of law while considering this aspect and that the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by filing the appeal beyond the prescribed time.*
4. *The Id. JCIT (Appeals) while refusing to condone the delay in filing of appeal has failed to appreciate that it has resulted in a situation where a meritorious matter based on facts being thrown out at the very threshold thereby defeating the cause of justice.*
5. *The appellant states that since the Id. JCIT (Appeals) having not dealt with the merits of the addition made, no grounds of appeal are raised on the same with a request to direct the Id. JCIT (Appeals) to allow the condonation of delay and decide the appeal on merits of the case.*
6. *The Id. JCIT (Appeals) ought to have considered and appreciated 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. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, such litigant runs a serious risk. The approach of the authorities should thus be justice oriented so as to advance cause of justice."*

2. The brief facts of the case are that the assessee did not file his return of income for A.Y. 2012-13. The case was reopened

by the AO under Section 147 of the Income Tax Act, 1961 (in short 'the Act') on the basis of information in ITS module that the assessee had entered into share/stock/commodity transactions at NSE/Multi Commodity Exchange and had earned income to the extent of Rs.10,38,280/-. In the course of assessment, there was no compliance made by the assessee. The assessment was completed u/s. 144 r.w.s. 147 of the Act on 24.12.2019 at total income of Rs.11,30,930/-.

3. Aggrieved with the order of the AO, assessee has filed an appeal before the First Appellate Authority, which has been decided vide the impugned order. The Ld. JCIT(A) did not condone the delay of 434 days in filing of the appeal and the appeal was treated as non-est and not admitted.

4. Now, the assessee is in second appeal before us.

5. Shri M. K. Patel, Ld. AR appearing for the assessee submitted that assessee was not allowed any opportunity to represent his case before the Ld. JCIT(A) who had dismissed the appeal without adjudicating the matter on the merits of the case. The Ld. Counsel explained that though the apparent delay was for 434 days, most of the period was covered during Covid pandemic and actual delay on the part of the assessee was 49 days only. He further explained that this delay was caused for the reason that the order of the AO was received only on email of the Ex-

Accountant who did not inform the assessee in time. He, therefore, requested that the matter may kindly be set aside and restored to the file of Ld. CIT(A) with a direction to adjudicate the matter on merits after condoning the delay.

6. Per Contra, Shri Rohit Aasudani, Ld. Sr. DR relied upon the order of the Ld. JCIT(A).

7. We have carefully considered the rival submissions. It is found from Form No.35 that the assessee had explained the reason for delay in filing of the appeal before the First Appellate Authority. It was submitted that the notices and the orders were received only on email of Ex-Accountant and there was no direct physical communication to the assessee from the department. As the Ex-Accountant did not inform the assessee in time, this led to delay in filing of the appeal. It is found that the Ld. JCIT(A) did not consider the fact that majority part of the delay was covered by the Covid pandemic period. The Hon'ble Supreme Court in the case of *Cognizance for Extension of Limitation, [2022] 134 taxmann.com 307 (SC)* has ordered that period from 15.03.2020 to 28.02.2022 shall be excluded for the purposes of limitation under any general or special law in respect of all judicial or quasi-judicial proceedings. In view of this judgment, the Ld. JCIT(A) is directed to exclude the period from 15.03.2020 to 28.02.2022 from the period of delay on the part of the assessee. Considering the fact that the matter was not adjudicated on the

merits, we deem it proper to set aside the matter to the file of the Ld. CIT(A) for re-consideration. He may take a lenient view in the delay caused by the assessee in filing of the appeal before him after excluding the period from 15.03.2020 to 28.02.2022 as discussed above. He may also decide the matter on the merits of the case after allowing the assessee a reasonable opportunity of being heard. The assessee is directed to make compliance before the Ld. CIT(A) and not to seek any adjournment without any pressing reason.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

**This Order pronounced on 05/09/2024**

Sd/-  
(SUCHITRA KAMBLE)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 05/09/2024

S. K. SINHA

*True Copy*

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**