

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 505/Ahd/2024
Assessment Year 2011-12**

Sameerkumar Hemantkumar Timbalia D-501, Sahitya Residency, Nr. Platinum Plaza, Opp. Pavilion Mall, Nikol, Ahmedabad-382350 Gujarat PAN: AFUPT2116F (Appellant)	Vs	Income Tax Officer Ward-5(3)(5), Ahmedabad (Respondent)
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**Assessee Represented: Shri Hardik Vora, Advocate
Revenue Represented: Shri Ramesh Kumar, Sr.D.R.**

Date of hearing : 03-10-2024
Date of pronouncement : 08-10-2024

आदेश/ORDER

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

This appeal is filed by the Assessee as against the ex-parte appellate order dated 27.07.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2011-12.

2. The registry has noted that there is a delay of 177 days in filing the appeal by the assessee. The assessee explained by way of a Notarized Affidavit that the reassessment proceedings were completed in Physical Mode and the same were handed over to the Tax Consultant Shri Abhishek Soni for filing appeal before Ld. CIT(A). Whenever the assessee received hearing notices from Ld. CIT(A), the same was forwarded to the Tax Consultant, however he failed to file submissions before Ld. CIT(A) which has resulted in passing ex-parte appellate order dated 27-07-2023. It was thereafter on 18-10-2023 assessee's refund due for the Asst. Year 2023-24 was adjusted against outstanding demand of A.Y. 2011-12 thereby the assessee realized the exparte appellate order passed by Ld. CIT(A). Since the original assessment papers were already handed over to the Tax Consultant, the assessee requested the above assessment records from the Assessing Officer which was received in March 2024 thereby there is a delay of 177 days in filing the above appeal and requested to condone the same in the interest of justice.

3. Per contra, Ld. Sr. D.R. Shri Ramesh Kumar appearing for the Revenue submitted that the assessee is a non-filer of Tax Return since there were cash deposit to the tune of Rs.16,85,500/- in his bank account, the case was reopened u/s. 148 of the Act. The assessee filed belated return and because of the non-cooperation by the assessee by providing required details, additions were made on account of unexplained cash deposit of Rs.22,01,500/- and unexplained investment in shares of Rs.10,34,532/-. Since the

assessee was non-cooperative at all levels, the delay in filing the appeal is not to be condoned.

4. Per contra, Ld. Counsel submitted just because of the inaction of the former Tax Consultant, the impugned tax demand has raised in the hands of the assessee. If the assessee be given one more opportunity of hearing before Ld. CIT(A), he undertake to file all the required bank details also explain the cash deposits and therefore requested to set aside the matter to the file of ld. CIT(A) on levying reasonable cost of Rs.5,000/- to the assessee.

5. Recording the above statements of the rival parties and without going into the merits of the case, the exparte appellate order passed by Ld. CIT(A) is hereby set aside with a cost of Rs.5,000/- payable by the assessee to Prime Minister National Relief Fund within a period of two weeks of receipt of this order. On production of the receipt for payment of cost of Rs. 5,000/- before Ld. CIT(A), he is directed to dispose of the appeal on merits by giving adequate opportunity of hearing to the assessee. Needless to say the assessee should make use of the final opportunity and cooperate with appellate Commissioner to pass order on merits of the case.

6. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 08-10-2024
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Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 08/10/2024

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