

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2159/MUM/2024  
(Assessment Year: 2010-11)**

**M/s. Hasmukh A. Shah (HUF)**

A/10, Sarvodaya Nagar,  
1<sup>st</sup> Panjrapole Road, C.P.Tank Road  
Mumbai – 400004 Maharashtra.  
[PAN: AAQPS1192K]

..... **Appellant**

Vs

**Income Tax Officer Ward 19(1)(5),  
Mumbai**

Matru Mandir Building,  
Tardeo Road, Grant Road,  
Mumbai – 400007, Maharashtra.

..... **Respondent**

**Appearance**

For the Appellant/Assessee : None  
For the Respondent/Department : Shri P. D. Chougule

**Date**

Conclusion of hearing : 22.08.2024  
Pronouncement of order : 30.10.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Assessee is directed against the order, dated 16/05/2018, passed by the Commissioner of Income Tax (Appeals)-29, Mumbai, [hereinafter referred to as 'the **CIT(A)**'] under Section 143(3) read with Section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 29/02/2016, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2010-11.

2. The Appellant has raised the following grounds of appeal in the present appeal:

*"The Ld. Commissioner of Income-tax (Appeals) [hereinafter referred to as "Ld. CIT(A)"] has erred in upholding the order of the Ld. Assessing Officer and disallowing the purchase to the extent of 12.5% of Rs.67,08,214/- amounting to Rs.8,38,528/- on account of purchase from non-genuine purchase parties."*

3. When the appeal was taken up for hearing none was appeared on behalf of the Appellant. However, after examining the issue raised in the appeal, we proceed to decide the issue on merits on the basis of material on record after hearing the learned Departmental Representative.
4. We have considered the submissions advanced by the Learned Departmental Representative and perused the material on record.
5. We note that there is delay of 2075 days in filing the present appeal. The Assessee has filed application seeking for condonation of delay in filing the appeal along with affidavit wherein it has been stated as under:

*"I had preferred an appeal against the order of CIT(A) - 29 for A.Y. 2010-11 dated 11.05.2018 received on 19.06.2018. The CIT (A) has disposed off the said appeal against which we would like to state that the appeal was required to be filed on or before 18.08.2018 however the said appeal is scheduled to be filed on 23.04.2024 i.e. delay of 2075 days. In regards to the same we would like to state as under due to the circumstances beyond our control filing for the appeal against the CIT (A) -29 before the Income Tax Appellate Tribunal could not be done in due course and within the time prescribed."*

*Mr Hasmukh A Shah Karta of Hasmukh A Shah HUF was battling with Cancer since 2013 requiring extensive medical treatment and attention. This unforeseen and debilitating illness consumed much of our time and energy, rendering it impossible for us to adhere to the original filing deadlines.*

*Later on he was contracted with COVID-19, which significantly impacted their health and ability to carry out routine tasks, including attending to legal matters. Subsequently the office was closed due to the imposed lockdown, accessing necessary documents and seeking legal assistance became further challenging. Tragically, despite the valiant efforts of medical professionals Mr Hasmukh A Shah passed away on 21.11.2022 the emotional and logistical strain of battling cancer exacerbated the delays in filing the appeal. So due to his various and continuous health issues he was not able to file appeal against the CIT A (29) for the AY 2010-11 even after the Appeal fees of Rs. 10,000 was paid on 25-02- 2020.*

*We understand the delay in filing appeal is substantially very very long but you will also understand that the same is due to unforeseen circumstances. We have already paid the appeal fees of Rs. 10,000 on 25-02-2020 ie. just fortnight before COVID. Attaching herewith the Photocopy of Affidavit of Rs. 500 for condonation of delay duly notarized. We humbly submit that the delay has occurred by inadvertence and there was absolutely no willful intention in not filing the appeal on time. We are thus prevented by sufficient cause in not filing the appeal on time and hence pray for condonation of delay of Approx. 2075 days."*

6. We have given thoughtful consideration to the relevant statement in the application provided by the Appellant for condonation of delay in filing the appeal. There is no reason to disbelieve the facts as stated in the above application. We note that initially appeal could not be filed on account of medical issues faced by the Karta of the Appellant who was suffering from cancer. While

the Appellant had paid fee on 25/02/2020, the Appellant could not arrange to get the appeal filed on account of COVID-19 pandemic. Subsequently, the karta of the Appellant passed away due on account of medical complications on 21/11/2022. The appeal could only be filed on 23/04/2024 after a delay of 2075 days of receipt of the order. In the case of Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC) the Hon'ble Supreme Court has, while dealing with the issue of condonation of delay, emphasized that substantial justice should prevail over technical considerations. Every day's delay must be explained does not mean that a pedantic approach should be adopted; and that the aforesaid doctrine must be applied in a rational common sense and pragmatic manner, more so, in circumstances where a litigant does not stand to benefit by lodging the appeal late (as is the case in appeal before us). Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. In the present case the bonafides of the Appellant are not under challenge. Keeping in view of the reasons stated in the application seeking condonation of delay, we condoned the delay of 2075 days in filing the present appeal and proceed to examine the issue on merits.

7. The relevant facts in brief are that the Appellant filed the return of income on 25/09/2010 declaring income on at Rs.5,50,668/- which was processed u/s. 143(1) of the Act. Subsequently, the reassessment proceeding were initiated in the case of the Appellant on the basis of information received from the investigation wing that the Appellant had booked bogus purchases and had claimed deduction for the same. In the said reassessment proceedings culminated into order dated

29/02/2016 passed under Section 143(3) 147 of the Act whereby an addition of INR 8,38,528/- was made on account of bogus purchases being 12.5% of the alleged bogus purchases of INR.67,08,214/-.

8. In appeal before the CIT(A), the Appellant contended that the Assessing Officer erred in making addition of 12.5% of bogus purchase without appreciating all related documents/details were furnished during the re-assessment proceedings. The alleged bogus purchases were duly recorded in the books of accounts and were supported by the invoices issued by the vendors and the payments reflected in bank statement. The goods purchased were sold and the sale was also recorded in books of accounts. The Appellant had filed statement showing one to one nexus between the goods purchased and sold. However, the aforeaid submission did not find favour with the Appellant and the appeal was dismissed by the CIT(A) vide order dated 16/05/2018.
9. The Appellant in now in appeal before us against the above order passed by the CIT(A).
10. On perusal of the order impugned we find that the Appellant had also made an alternative submission before the CIT(A) which has been reproduced in paragraph 3.2 [at page 6] of the order impugned and reads as under:

*“Written Submission -2*

*"Without prejudice to whatever submitted in the earlier submission, we would like to state as under:-*

*The Purchases of Rs. 67,08,214/- which are considered as purchases from non-genuine party and corresponding sales against the same were submitted before the Ld. Assessing Officer and submitted in our written submission Paper Book I.*

*We have to state that, the Gross Profit percentage of the firm as a whole is 6.17%.*

*The Gross Profit Percentage for sales made against purchases from said parties is 3.65% as per the disposal statement attached under paper book 1 enclosed herewith the same for your ready reference.*

*We have to state that if the same percentage of Gross Profit is applied on the sales against the purchases from said parties i. e. 3.65% on Rs. 67,08,214/- i.e. Rs.2,44,850/- The Gross Profit margin as disclosed by the Appellant against the said sales is Rs.5,45,342/- i e. 3.65%*

*Hence, the profit margin disclose by the appellant on the said transaction is 3.65%*

*Based on the above facts and statements we request you to consider Gross Profit percentage and accordingly decide the case on merit."*

11. On perusal of the above, we find that the gross profits declared in respect of alleged non-genuine purchases were 3.65% whereas as the overall profits declared by the Appellant was 6.17%. However, the CIT(A) has not dealt with the aforesaid alternative plea. In our view, the alternative submissions merit consideration in view of the judgment of the Hon'ble Bombay High Court had, in case of Pr. CIT-17 vs. Mohammad Haji Adam & Co. [2019] 103 taxmann.com 459 (Bom). Keeping in view the overall facts and circumstances of the present case, we direct the Assessing Officer to restrict the addition to difference between the profit margin offered to tax on genuine purchases and the profit margin offered to tax on non-genuine purchases by the Appellant. In terms of the aforesaid, Ground No.1 raised by the Appellant is allowed.

In result the present appeal preferred by the Appellant is partly allowed.

Order pronounced on 30.10.2024.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.10.2024

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /((Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai