

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ SMC, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 1543/Ahd/2024 & 1544/Ahd/2024
निर्धारण वर्ष / Assessment Year : 2018-19

Mahamadbbhai Rahemanbbhai Makwana Prop. Of Master Platers Udhyognagar Tavdipura, Shahibaug Ahmedabad - 380 004 (Gujarat)	<u>बनाम/ v/s.</u>	The ITO Ward-3(1)(2) Ahmedabad - 380 015
स्थायी लेखा सं./PAN: AKTPM 2009 E		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri P.F. Jain, AR
Revenue by :		Shri Nitin Vishnu Kulkarni, Sr.DR

सुनवाई की तारीख/Date of Hearing : 21/10/2024
घोषणा की तारीख /Date of Pronouncement: 28/10/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

Both these appeals by the assessee, Mahamadbbhai Rahemanbbhai Makwana, have been filed against two separate orders both dated 22/08/2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "CIT(A)"], arising out of the assessment order passed by the Assessing Officer [hereinafter referred to as "AO"] under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], and the

penalty order passed under Section 270A of the Act for the Assessment Year 2018-19. Since both these appeals arise from the same assessment proceedings and the issues are inter-connected, for the sake of convenience, these are being heard together and disposed of by way of this combined order.

Facts of the Case:

2. The assessee is an individual engaged in the business of surface finishing as the proprietor of Master Platers located in Ahmedabad. The assessee filed his return of income for the Assessment Year 2018-19 on 27/08/2018, declaring a total income of Rs.4,09,890/-. The return was processed under Section 143(1) of the Act, and subsequently, the case was selected for limited scrutiny under the E-assessment Scheme, 2019, with the issue being the purchase of immovable property where the purchase value was lower than the stamp duty value as per Section 56(2)(x) of the Act. During the year under consideration, the assessee purchased two immovable properties in Dariyapur, Ahmedabad:

- Property 1: Purchased for Rs.45,00,000/-, with a stamp duty value of Rs.50,24,000/-.
- Property 2: Purchased for Rs.7,41,000/-, with a stamp duty value of Rs.45,27,000/-.

2.1. The difference of Rs.43,10,000/- between the purchase consideration and the stamp duty value was treated as income from other sources under Section 56(2)(x) of the Act by AO, and an addition of Rs.43,10,000/- was made

to the assessee's total income. The AO relied on the Departmental Valuer's report, which confirmed the higher valuation.

2.2. During the assessment proceedings, the assessee provided an explanation for the lower purchase consideration, citing tenanted nature of the properties, which reduced their market value and ongoing litigation regarding possession, which further impacted the valuation. Despite these submissions, the AO did not accept the explanation and made the addition based on the stamp duty value as determined by the Departmental Valuer.

2.3. Subsequently, penalty proceedings under Section 270A of the Act were initiated for under-reporting of income. A penalty of Rs.6,28,541/- (50% of the tax on the under-reported income) was levied on the assessee. The assessee explained that he had relied entirely on his tax consultant to handle the income tax proceedings and was unaware of the need to file an appeal against the assessment order within the prescribed time. The penalty was imposed despite the assessee's argument that the valuation difference did not constitute under-reporting of income, as it was a result of legitimate market conditions.

3. The assessee filed appeals before the CIT(A), NFAC, against both the quantum addition and the penalty imposed. The appeal against the quantum addition was filed with a delay of 154 days, which the assessee attributed to the negligence of his tax consultant. The CIT(A), however, dismissed the quantum appeal as time-barred, stating that the delay was not condoned due to insufficient cause. Consequently, the penalty appeal was also dismissed, as the quantum addition stood confirmed.

4. Aggrieved by the orders of the CIT(A), the assessee filed appeals before us with following grounds of appeal:

Ground in ITA No. 1543/Ahd/2024

1. *The learned CIT (appeal) has grievously erred in law and facts in dismissing the appeal total disregard of propositions laid down by Supreme Court and duly considered by the other courts for condonation of delay of filling of appeal, on the ground of delay without considering the cause of delay on account of default of his counsel as detailed in Sr. No. 15 of Appeal memo in form No. 35 in as much as that it is abdication of statutory duty cast on him by the Act.*
2. *He has erred in law and facts in holding the appeal as not maintainable, ab initio, time barred and in absence of any justified reasons without considering the reason that any default on the part of counsel is a reasonable cause as per the proposition laid down by the Honorable Supreme court.*
3. *He has grievously erred in law and facts in not deciding the appeal on merit wrongly mentioning in para 9 of Appeal order of Disposing of Appeal on merits and based on information / documents available on record in as much as that neither he has considered appeal on merit nor he has considered the information / documents available on record.*
4. *He has violated the principles of law in as much as that he has no power to reject the appeal without considering the same on merit.*
5. *He has grievously erred in law and on facts in not considering the ground of appeal against addition of Rs 43,10,000/- u/s 56(2)(x) on purchase of two properties of Dariyapur without considering the submission of the appellant for less value as compared to Jantri Value.*
6. *He has erred in law and on facts in not considering the factors having bearing on the value of the properties which included tenanted property with litigation pending in the court.*
7. *On the facts of the assessee, no addition of Rs43,10,000/- based on valuation report of department valuer ought to have been made by the Income tax officer without considering the detailed submission placed on record.*
8. *On the facts of the assessee, the value of properties as per registered documents at Rs 52,41,000/- as against Rs 95,51,000/-adopted by the AO ought to have been accepted by considering the detailed submission placed before him against erroneous value adopted by the valuers.*

9. *On the facts of the assessee the appeal ought to have been decided on merit by condoning the delay occurring on account of reasonable cause and the appeal ought not to have been held as not maintainable ab - initio.*
10. *Appellant craves leave to add, to alter and or modify any ground of appeal.*

Ground in ITA No. 1544/Ahd/2024

1. *The learned CIT (appeal) has grievously erred in law and facts in confirming the penalty of Rs.6,28,541 imposed by the A.O. u/s 270A on the ground that the quantum appeal has been dismissed where by the additions made by the A.O. get confirmed.*
 2. *He has erred in law and facts in upholding the penalty without recording any finding ignoring the fact that penalty proceedings and assessment proceedings are separate and by upholding the addition in quantum appeal the penalty appeal does not get decided against the assessee.*
 3. *He has grievously erred in law and facts in confirming the penalty by wrongly observing in para 4 that appeal has been disposed on merit and based on information /documents available on records. In as much as that even though penalty reply with relevant documents dated 15/02/2022 addressed to the A.O. and mentioned in ground No. 2 of the appeal has not been considered and there is no consideration of appeal either on merit nor on documents available on records rendering the findings as vitiated by the law.*
 4. *The penalty levied u/s 270A deserves to be deleted in as much as that the learned CIT (A) has ignored the submission submitted to be as abdication of his statutory duty cast on him as per law.*
 5. *On the facts of the assessee no penalty u/s 270A at 50% of tax of Rs.12,57,082/- on account of addition of Rs.43,10,000/- on purchase of property based on difference on account of value estimated by the Departmental valuer ought not to have been levied in as much as that it is not under reporting of income.*
 6. *On the facts of the assessee no penalty ought to have been levied.*
 7. *Appellant craves leave to add, to alter and or modify any ground of appeal.*
5. During the hearing before us, the Authorised Representative (AR) of the assessee reiterated that the reason for the delay had been clearly stated in the appeal memo (Form 35) before the CIT(A). Despite this, the CIT(A) did

not take up the matter on merits and dismissed the appeal solely on the ground of delay. It was submitted that the delay occurred due to the negligence of the tax consultant, and once the assessee became aware of the default, immediate steps were taken to file the appeal. On the other hand, the Departmental Representative (DR) argued that the explanation provided by the assessee was an afterthought and that the CIT(A) had adequately dealt with the issue of delay in his order. The Department emphasized that the CIT(A) was correct in rejecting the appeal on procedural grounds, given that the delay was not convincingly explained.

6. After considering the submissions made by both the sides, we are of the view that, in the interest of justice, it is imperative that the matter be decided on merits. While the issue of delay is relevant, procedural lapses should not prevent the adjudication of substantive rights, especially when reasonable cause has been shown for such delays.

6.1. We have reviewed the facts and circumstances leading to the delay in filing the quantum appeal. The assessee's reliance on his tax consultant for handling the assessment proceedings and subsequent appeal is well-established. The delay arose due to the tax consultant's negligence, which the assessee promptly rectified upon discovering the issue after receiving the penalty order. The explanation provided for the delay, as stated in Form 35, is plausible and in line with judicial precedents that allow condonation in cases where the assessee acted in good faith and the default occurred due to factors beyond his control. The Hon'ble Supreme Court has consistently advocated for a liberal approach in condoning delays to further the cause of justice. In this case, the delay was not deliberate or due to any mala fide

intention, and in the interest of substantial justice, we hereby condone the delay of 154 days in filing the quantum appeal.

6.2. With the delay condoned, the next issue is the adjudication of the quantum appeal on merits. The assessee has raised pertinent issues concerning the valuation of the properties, particularly the tenanted nature and legal disputes affecting the market value. These factors were not adequately considered by the Departmental Valuer or the AO in making the addition under Section 56(2)(x) of the Act. Furthermore, the assessee has also provided comparable sales data of similarly disputed properties, which suggest that the valuation adopted by the Department was excessive.

6.3. In view of the above, we believe it is necessary for the CIT(A) to examine the matter in detail, particularly considering the factual circumstances surrounding the properties. Therefore, we restore the quantum appeal to the file of the CIT(A) with directions to re-adjudicate the matter on merits, after providing the assessee a reasonable opportunity of being heard.

6.4. Since the penalty imposed under Section 270A of the Act is consequential to the quantum addition, the penalty appeal is also set aside. The CIT(A) is directed to re-adjudicate the penalty after deciding the quantum appeal. If the quantum addition is deleted or modified, the penalty shall be reconsidered accordingly.

7. In conclusion, the appeal against the quantum addition is allowed for statistical purposes, and the matter is restored back to the file of the CIT(A)

for a decision afresh on merits. The penalty appeal is set aside, with directions to the CIT(A) to adjudicate the penalty after deciding the quantum addition.

8. In the combined result, both the appeals filed by assessee are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 28 October, 2024 at Ahmedabad.

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

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 28/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad