

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Dr. BRR Kumar , Vice President  
And Ms. Suchitra Kamble , Judicial Member**

**ITA No. 680/Ahd/2024  
Assessment Year 2010-11**

Rambadal Dhunmum Yadav, B-46 Parth Housing Complex, Nr. Akota Garde, Akota, Vadodara PAN: AAMPY9110D (Appellant)	Vs	The ITO, Ward-1(2)(5), Vadodara (Respondent)
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**Assessee by: Adjourment Application  
Revenue by: Shri C. Dharani Nath, Sr. D.R.**

Date of hearing : 20-11-2024  
Date of pronouncement : 22-11-2024

**आदेश/ORDER**

**PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-**

This is an appeal filed against the order dated 03-03-2024 passed by ld. CIT(A) for assessment year 2010-11.

2. The grounds of appeal are as under:-

*"1. The Comm. of Income tax (A) have erred both in Law and in fact in upholding that levy of Penalty u/s. 271(1) (c) of Rs 14,53,850 since there was a delay in filing Appeal of 60 days the said Appeal is tot maintainable and thereby It is dismissed.*

*Your Appellant submits that the delay in filing Appeal is for good and valid reasons are there is no malafide or the Appellant did not get any advantage by delay in filing Appeal therefore the CIT(A) ought to have considered Appeal in time and he ought to have condoned the delay of 60 days*

*2. Your Appellant further submits that at the time of filing Form No. 35 the Registry of Comm. of Income tax (A) did not point out any delay or any defect in the Memo of Appeal and that the CIT(A) also did not give a Show Cause Notice before finally considering the Appeal as Time Barred.*

*3. Your Appellant further submits that after accepting the Memo of Appeal without any defects or the objections CIT(A) initiated proceedings of Hearing and he gave several notices meaning there by CIT (A) Waived the delay of the Appeal. Where Appellant gave Written Submissions to notice of 15/12/2022 pointing out the facts of the case, the cause of delay and also Appeal was allowable on merits of the case vide reply dated 26/12/2022.*

*4 ( a) It is submitted that the office of CIT(A) not having issued any Defect Memo and the CIT(A) had fixed the hearing of Appeal several times and accepted reply of your Appellant on Record it means that the CIT(A) has condoned the delay of filing Appeal of 60 days u/s 249 (3)*

*(b) Your Appellant submits that the CIT(A) having condoned the delay he ought to have considered the Appeal on merits of the case instead dismissing the Appeal.*

*It is therefore submitted that reliefs claimed above be allowed and the order of the Assessing Officer be modified accordingly. Your Appellant reserves right to add, alter amend to withdraw any or all Ground of Appeal.”*

3. Assessment proceedings u/s. 143(3) r.w.s. 144 of the Income Tax Act, 1961 was passed on 10-01-2013 for assessment year 2010-11 after making of addition of Rs. 36,092/- on account of wrong claim of deduction u/s. 24 of Income Tax Act, 1961, Rs. 23,43,705/- disallowance on account of unexplained cash credit u/s. 68 of the Act, Rs. 24,22,305/- on account of

unaccounted receipts from Shiva Phrama Ltd. and Rs. 2,06,883/- on account of unaccounted receipts received from various companies. The penalty proceedings u/s. 271(1)(c) of the Act was initiated to deal with the concealment of income of Rs. 48,02,102/-. The Assessing Officer subsequently imposed the penalty u/s. 271(1)(c) of Rs. 14,83,850/- on concealed income of Rs. 48,02,102/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal on the ground of delay of 65 days.

5. The Id. A.R. submitted that CIT(A) did not point out any delay or defect in the memo of appeal filed before the CIT(A) and did not give any show cause notice before finally considering the appeal as time barred and therefore the matter may be remanded back to the file of CIT(A) and the delay in filing the appeal before the CIT(A) be condoned.

6. The Id. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. The assessee has not appeared before the CIT(A) and has not given any explanation as such for delay in filing the appeal before the CIT(A) and therefore it will be appropriate to remand back this matter to the file of CIT(A) for properly adjudicating the cause of delay and decide the condonation of delay as well as the CIT(A) will decide issues contested by

the assessee before CIT(A). The assessee is directed to fully co-operate with the appellate proceedings before the CIT(A) and file relevant documents within the stipulated time given by the CIT(A). If there is any delay on the part of the assessee, the CIT(A) can proceed as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

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

Order pronounced in the open court on 22-11-2024

**Sd/-**  
**(DR. BRR KUMAR )**  
**VICE PRESIDENT**

**Ahmedabad : Dated 22/11/2024**

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

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

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद