

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 5322 & 5321/MUM/2024

(Assessment Year : 2010-11 & 2013-14)

Jaya GajendraKumar Munot

Shop No.1, 123, Ardeshir Dady Street,

Ardeshir Dady Street,

Mumbai, Maharashtra - 400093

PAN: APDPM2823H

..... Appellant

v/s

ITO, Ward – 19(1)(5)

Mumbai- 400012

..... Respondent

Assessee by : Shri Prashant Ghamre

Revenue by : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing – 26/11/2024

Date of Order - 29/11/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeals against the separate impugned orders of even date 07/08/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the Assessment Years 2010-11 and 2013-14.

2. Both the appeals filed by the assessee are delayed by 4 days. The assessee has filed an application seeking condonation of delay in filing the appeals before the Tribunal. In order to support her prayer made in the

aforesaid application, the assessee has also filed an affidavit duly explaining the circumstances resulting in a delay of 4 days in filing the present appeal before the Tribunal and also explaining the reasons for non-compliance to various notices issued during the assessment proceedings as well as during the appellate proceedings before the learned CIT(A). The relevant portion of the affidavit filed by the assessee is reproduced as follows for ready reference: -

"3. I say that, I received education upto 8th std. in Rajasthan and I am not well-versed with technological advancements and use of electronic media. I got married to Gajendra Munot in the year 1991. After I came to reside in Mumbai. I started business in stainless steel in Mumbai under the firm name and style of Raj Rajeshwari Industries from the above mentioned shop address in the year 2009. This business was handled by me along with assistance of my husband. Thereafter my husband went away abroad in 2009, my young son Akshay Munot who was 19 years old at that time and studying in the college, started assisting me from 2010 onwards.

4. I say that, as a layman I was not conversant with the procedure prescribed under sales tax and income tax laws. I had to take help and assistance of professionals, like Chartered Accountant, Shri Mangilal Bishnoi, who also hailed from Rajasthan and was practicing as such from Mumbai. CA Bishnoi assisted me in accounting required for my business and did not look after my income tax affairs.

5. I say that, thereafter, in and around May 2015, the firm closed down. I gave the shop for rent to Mr. Bharat Jain from April 2017 to May 2020, and I was not informed by the tenant about receipt of any income tax notice. Further, in between around May 2015 to April 2017, the shop remained closed since the landlord did not allow us to give the shop on a rent basis because of a dispute. The shop is owned by me but because of pagdi tenancy system, I had to await permission of the landlord.

6. I say that, around December 2015, my son had gone to Income Tax Office to inquire about the refund due in case of Raj Rajeshwari Industries, whereupon he was informed that certain notices were issued in this case. Immediately, either me or my son personally visited the A.O. on different occasions, to collect notices that have been issued. On receipt of such notices, I along with the help of my son was trying to compile documents for making necessary submission. However, in the meantime, the A.O. passed an ex-parte order dated 28.03.2016.

7. I say that, in between around May 2015 to April 2017, the shop remained closed, and hence I did not receive the Assessment order dated 28.03.2016. I

only found out about such order on in around February 2021 when I received a copy of the order and demand notice.

8. I say that, immediately thereafter, my son approached M/s C. S. Mehta & Co., a CA firm having its offices at Dalamal Chamber, New Marine Lines. CA Mehta advised me to file an appeal against the order dated 28.03.2016. Accordingly, an appeal was filed on 22.03.2021 along with an application for condonation of delay. Thereafter, unknown to me, the firm M/s C. S. Mehta & Co. closed down its profession because Mr. Mehta was at his retirement stage.

9. I say that, thereafter, my son visited the Income Tax Office and was informed that the proceedings are Faceless, and advised us to hire a CA. However, since my financial condition was not well during that year, I was not able to avail the services of a CA.

10. I say that, for the above mentioned reasons, the notices remained to be complied with. Thereafter, on 07.08.2024, the CIT(A) passed an ex-parte order and only on receipt of such email on my son's email-id, I became aware of the fact that the matter was dismissed ex-parte.

11. I say that, the said order was passed on 07.08.2024 and, accordingly, the last day for filing the appeal before the Tribunal was 06.10.2024. I say that, after receipt of order of the CIT (A) on 07.08.2024, since it is the first time I was ever dealing with appeal that it took one time to consult professional and compile necessary details. Due to this, the appeal came to be filed on 10.10.2024.

12. I say that, however, for the reasons recorded above, the appeal was filed on 10.10.2024. I say that, therefore, there is a delay of 04 [four] days in filing the appeal before the Hon'ble Tribunal."

3. Having considered the submissions of the assessee made in the application seeing condonation of delay which is duly supported by the affidavit, we are of the considered view that there was sufficient cause which prevented the assessee from filing the present appeals within the limitation period. Accordingly, we condone the delay in filing the appeals filed by the assessee and proceeded to decide the same.

4. It is evident from the record that the learned CIT(A) has passed the impugned orders *ex parte* due to the non-appearance of/on behalf of the assessee. From the perusal of the impugned order, we find that the learned CIT(A) granted multiple opportunities of hearing to the assessee, however,

the assessee neither complied with any of the notices nor filed any adjournment request. We further find that even during the assessment proceedings, the assessee could not produce the documents as sought by the Assessing Officer ("AO") and therefore the assessment was completed on the best judgment basis under section 144 of the Act on the basis of the material available on record. We find that the assessee has duly explained the circumstances for non-compliance with the notices issued during the assessment proceedings and before the learned CIT(A) in her affidavit as noted in the foregoing paragraph. In the present appeals before us, the assessee is duly represented by the learned Authorized Representative and wishes to pursue the litigation against the addition made by the AO.

5. In the facts and circumstances as noted above, we are of the considered view that in the interest of justice and fair play, the assessee be granted one more opportunity to represent her case on merits and produce all the documents in support of her claim. Since in the present case, the assessee neither appeared before the AO nor before the learned CIT(A), we deem it fit and proper to restore the matter to the file of the jurisdictional AO for *de novo* adjudication on merits after considering all the details/submissions as may be filed by the assessee and after providing due opportunity of hearing to the assessee. The assessee is directed to cooperate in the assessment proceedings and furnish all the details as may be sought by the AO for complete adjudication. As the matter is being restored to the jurisdictional AO for adjudication on merits, the other grievance raised by the assessee in the present appeals does not call for

adjudication at this stage. Accordingly, the impugned orders are set aside and the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 29/11/2024

Sd/-

**OM PRAKASH KANT
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 29/11/2024

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai