

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.1919 & 1920/PUN/2024  
निर्धारण वर्ष / Assessment Years : 2007-08 and 2009-10

Manju Madhusudan Dhoot, L/H of Late Madhusudan Dhoot, Dhoot Compound, Station Road Ahmednagar-414001 Maharashtra PAN : ADRPD8696H	Vs.	ITO, Ward-1, Ahmednagar
Appellant		Respondent

Assessee by	:	Shri Mahavir Jain
Revenue by	:	Shri B.S.Rajpurohit
Date of hearing	:	24.10.2024
Date of pronouncement	:	03.12.2024

**आदेश / ORDER**

**PER DR.MANISH BORAD, AM:**

These two appeals filed by the assessee pertaining to the Assessment Years (in short "AYs") 2007-08 & 2009-10 are directed against the separate orders passed u/s.250 of the Income Tax Act, 1961 [in short "the Act"] by Id. Commissioner of Income-tax (Appeals)-2, Pune [in short Id."CIT(A)"] both dated 02.12.2015 arising out of the Assessment orders passed u/s.144/144 r.w.s.147 of the Act dated 26.12.2011, respectively.

2. Since identical grounds have been taken by the assessee in these appeals I proceed to dispose of the appeals by this consolidated order for the sake of convenience.

3. At the outset, I find that in the case of assessee itself for A.Y. 2008-09 in ITA No.1907/PUN/2014 there was substantial delay of 1052 days and after considering the reasons cited by the assessee, the delay of 1052 days was condoned by this Tribunal by observing as under :

“3. The case file reveals that there was delay of 1052 days in filing the present appeal. Mrs. Manju Madhusudan Dhoot, Legal heir of Late Madhusudan Banshilal Dhoot has filed an affidavit dated 08.10.2014 wherein inter alia it is submitted that Madhusudan Banshilal Dhoot, the husband of Mrs. Manju Madhusudan Dhoot was looking after the business. He expired on 08.05.2012. Prior to his death, he was having many health issues and was hospitalized for a period of almost one year and therefore, he could not attend to any of his business nor could appear before CIT(A). It is further submitted that none of herfamily members were aware of his business happenings and it was only when the Income Tax Department started to pressurize for the demand, she could look into the matter and she realized that after his death entire business activity has come to an halt and it was very difficult to get even the required documents. Thereafter, after taking advice of some legal consultants, she filed the appeal. In these circumstances, delay had occurred in filing the present appeal and the delay was not due to any mala-fide intentions. She therefore, prayed that the delay occurred in filing the present appeal be condoned.

4. The Ld. AR for the assessee took us to the contention of affidavit and submitted in view of the submissions made by Legal heir of assessee and considering the facts and circumstances; delay in filing appeal may be condoned. The Ld. DR did not seriously objected to the prayer for condonation of delay in filing of appeal.

5. We have heard the rival submissions on the issue of condonation of delay. The assessee has in the sworn affidavit spelt out the reasons which lead to the delay in filing the present appeal. In view of the settled law that when substantial justice and technicalities are pitted against each other, then the cause of substantial justice deserves to be preferred and after considering the averments made in the affidavit and in the interest of justice, we condone the delay and admit the appeal for hearing.”

Similar were the reasons for the delay for the instant two assessment years and the same has been narrated in the condonation application filed by the assessee. Apart from the reasons cited in the application, I also observe that the assessee finally received the impugned orders from the

Assessing Officer (AO) on 16.07.2024 after having applied for the copies of the impugned orders to the AO vide letter dated 04.07.2024.

4. In this regard, I would like to quote the judgment of Hon'ble Supreme Court in the case of *Collector of Land Acquisition vs. Mst. Katiji*, 167 ITR 471 (SC) wherein it was held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. The Hon'ble Jurisdictional High Court in the case of *Vijay Vishin Meghani vs. DCIT*, 389 ITR 250 (Bom.) has held that in the matter of condonation of delay an overall view in the larger interest of justice has to be taken. None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate Authority finds that the litigant has deliberately and intentionally delayed filing of the appeal, that he is careless, negligent and his conduct is lacking in bonafides.

5. Applying the principles enunciated in the decisions referred hereinabove and in the facts of the present case I am of the view that it is not the length of delay which has to be seen it is the 'reasonable cause' which prevented the assessee to file the appeals. In light of above judicial precedents and in considering the events after the death of assessee, I condone the delay in filing the instant appeals and proceed for adjudication on merits.

6. I first take up the appeal for A.Y. 2007-08. Grounds of appeal raised by assessee in ITA No.1919/PUN/2024 read as under:

*“The following grounds are taken without prejudice to each other -*

*On facts and in law,*

*1] The Ld. CIT(A) erred in holding that the reopening u/s. 48 of the Act was valid without appreciating that reasons recorded for reopening the case were totally incorrect and hence, the reopening u/s.148 was bad in law and the reassessment order passed u/s.147 be declared null and void.*

*2) The Ld. CIT(A) failed to appreciate that the reopening u/s.148 was on reason to suspect and not on reason to believe and therefore, the reopening u/s.147 and the consequential reassessment be declared null & void.*

*3] The Ld. CIT(A) erred in confirming the addition of Rs.35,29,742/- on the ground that the assessee has not submitted any evidences and hence, the estimated disallowance of purchases @ 10% was justified.*

*4] The Ld. CIT(A) failed to appreciate that all the purchases were genuine and the estimated disallowance @ 10% of gross purchases was not justified and the same may kindly be deleted.*

*5] Without prejudice, the assessee submits that the disallowance is on very high side and the same may kindly be reduced.*

*6] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

7. From perusal of the above grounds apart from the legal issue challenging the reopening of the assessment u/s.147 of the Act for the A.Y. 2007-08 on merit, common grievance of the assessee is that the ld. CIT(A) erred in confirming the action of the AO making disallowance of purchases @10%, making addition of Rs.35,29,742/- and Rs.42,69,009/- for the A.Yrs. 2007-08 and 2009-10 respectively.

8. Firstly, I take up the legal issue raised by the assessee for A.Y. 2007-08 in ITA No.1919/PUN/2014 challenging the validity of reopening proceedings contending that the case of the assessee was already selected for regular scrutiny assessment and vide order dated 18.11.2009 framed u/s.143(3) of the Act income of the assessee was determined at Rs.6,37,605/- as against the returned income of Rs.4,37,607/- and also that complete details of purchases and sales and financial statements were called for and duly examined. Therefore, the impugned assessment proceedings are mere change of opinion, which is illegal, invalid and impugned proceedings deserves to be quashed.

9. On the other hand, ld. Departmental Representative supported the findings of ld. CIT(A).

10. I have heard the rival contentions and perused the record placed before us. The ld. CIT(A) has dismissed the assessee's grounds of challenging the validity of assessment proceedings u/s.147 of the Act observing as under :

“4. In ground No.1, the appellant has challenged the action of the Assessing Officer in reopening the case u/s.147. It has been submitted on behalf of the appellant that as per the reason for reopening given to her. It is seen that additions were made in the assessment year 2009-10 on account of unverifiable sundry creditors u/s.68 of the I.T. Act and on that basis the case was reopened which is not proper as because scrutiny assessment was already done in this case and reopening amounts to change of opinion.

4.1 I am unable to agree with the argument of the appellant in this case. In the A.Y. 2009-10, the Assessing Officer noticed that number of sundry creditors was bogus and therefore ha has made the addition. On identical ground the Assessing Officer reopened the assessment in the present assessment year. I therefore hold that the Assessing Officer had adequate reason to reopen the case. It is not necessary that the addition is required to be made always on the point mentioned in the reason for reopening. In the case of reopening entire

case is ....and the addition can be made on any point of discrepancy. Accordingly, the contention of the assessee is rejected and the reopening of the case is valid.”

11. I further notice that the basis for the reopening for A.Y. 2007-08 was the information available with the Assessing Officer based on his examination of records and purchase details for A.Y. 2008-09 found during the course of assessment proceedings. I notice that appeal of the assessee for A.Y. 2008-09 also came up before this Tribunal and the issue before the Tribunal was the addition made u/s.68 of the Act for the unexplained purchases. The observation of this Tribunal in para 7 of its order dated 10.04.2018 in ITA No.1907/PUN/2014 reads as under :

*“7. During the course of assessment proceedings, Assessing Officer noted that the balance sheet as at 31/03/2008 showed closing stock of Rs.3,72,62,824/-, sundry creditors of Rs.3,92,78,090/- and the total turnover of Rs. 3,52,21,512/-. The Assessing Officer noted that sundry creditors exceeded the total turnover and it raised suspicion about the genuineness of sundry creditors shown in the balance sheet. The assessee was asked to file copies of account extracts, confirmation letters, copies of return of income etc of the creditors. Assessing Officer noted that Assessee filed a part list of the creditors and the list did not contain their addresses. The Assessing Officer, thereafter, deputed one Inspector to carry out verification with some of the creditors. The Assessing Officer noted that the Inspector visited eight creditors of Aurangabad and reported that out of eight persons, seven creditors confirmed that they did not have any transaction whatsoever with assessee. The finding of Inspector was informed to the assessee. The Assessing Officer noted that no satisfactory explanation was furnished by assessee. He, therefore, considered the increased sundry creditors for the year of Rs.1,23,78,401/- as unexplained cash credits and made its addition u/s.68 of the Act.”*

12. From going through the observation of this Tribunal found in the assessee's own case for A.Y. 2008-09, more importantly, the report of the Inspector of having visited various sundry creditors at Aurangabad wherein 7 sundry creditors confirmed to have not entered into any transaction

with the assessee and that this information helped the AO to initiate the proceedings u/s.147 of the Act. I observe that the case of the assessee for A.Y. 2007-08 was scrutinized u/s.143(3) of the Act and the assessment completed on 18.11.2009. Thereafter, based on the information available with Assessing Officer for A.Y. 2008-09 he again initiated reassessment proceedings within four years from the end of the relevant assessment year, i.e., 2007-08.

13. Now proviso to section 147 of the Act prior to the amendment brought in by the Finance Act, 2021 provided that where an assessment u/s.143(3) or 147 has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of relevant assessment year unless any income chargeable to tax escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s.139 or in response to a notice u/s.142(1) or 148 of the Act or to disclose fully and truly all material facts necessary for his assessment for that assessment year. Now the last part of the proviso, i.e. '*assessee fails to disclose fully and truly all material facts necessary for his assessment*' is important and the same is applicable on the facts of the assessee because the sundry creditors appearing in the books were examined by the AO in the assessment proceedings for A.Y. 2008-09 and the assessee did not furnish the requisite information asked by the AO about the addresses of the vendors. Thereafter, the AO deputed Inspector to make the verification and then it was revealed

that 7 out of 8 vendors/sundry creditors refused to have any transaction with the assessee. This information indicated that purchases of the assessee are *prima-facie* not genuine to the extent it has been claimed in the income-tax return. This information in my considered view was sufficient for the AO to have initiated the reassessment proceedings for the year which has already been assessed u/s.143(3) of the Act since the material information was not disclosed correctly and truly by the assessee. Therefore, no interference is called for in the findings of the ld. CIT(A) dismissing the assessee's legal ground challenging the validity of reopening proceedings u/s.147 of the Act.

14. Now coming to the merits of the case where ld. CIT(A) has confirmed the addition/disallowances made by the AO @10% of the total purchases, I observe that in the assessment year ld. AO has mentioned that the books of account of the assessee are audited and Audit Report has also been furnished. Copy of audited Profit and Loss account indicates that the assessee is a manufacturer of Electrical items since it is charging the Excise duty and also claiming the electricity charges, wages etc. in the manufacturing account.

15. Now coming to the observation of the AO, I notice that the same are common for both the years and so far as for A.Y. 2007-08 ld. AO after observing the figures of opening stock purchases, sales, closing stock etc., has thereafter devoted his energy for the purchases made by the assessee

subjected to VAT @4% and 12.5%. The observations of the AO is interesting which reads as under :

“6. Owing to non-compliance on the part of the assessee with the notices, copies of VAT returns filed by the assessee with the Sales-tax were obtained. This was with a view to cross-check Department purchases/sales figures. Verification of the figures appearing in these returns with the audit report revealed no difference in the purchases/sales amounts. The VAT returns reflect that the assessee was liable to pay VAT @ 4% and 12.5% on purchases. The VAT on sales was also @ 12.5%. The assessee has disclosed following purchases in the VAT returns.

Purchases @4% VAT	Rs.38,45,343/-
VAT @4%	Rs.1,53,814/-
Purchases @12.5% VAT	Rs.3,77,65,380/-
VAT @12.5%	Rs.47,20,673/-
Sales @12.5% VAT	Rs.4,12,60,323/-
12.5% VAT	Rs.53,38,405/-.

7. The assessee is a manufacturer of electronic components. Past records reveal that his sales are only to various Videocon Group of companies. There is a huge difference of 8.5% in the two VAT rates (4% and 12.5%). The only reasonable inference that prima-facie, follows from this is that the assessee in all likelihood had increased 12.5% VAT purchases with the intent of lessening VAT liability on sales. As a sequel, assessee inflates purchases-it affects value of stock which, in turn, results into swelling the trade creditors year after year.

8. In the absence of books of account or other documents; of the total purchases claim of Rs.4,26,90,097/, an estimated 10% claim is presumed to be inflated. In absolute term, the amount works out to Rs.42,69,009/-. Addition to this extent is made to the returned income."

16. Going through the above observation, I notice that the ld. AO has made the impugned addition taking the basis of VAT rates. Though the assessee is showing sales @12.5% VAT and the purchases of 12.5% VAT amounts to almost 82% even then the AO on his own surmises and conjectures has observed that there is a huge difference of 8.5% in the two VAT rates and the assessee has intentionally increased to 12.5% VAT purchases with the intent of lessening VAT liability on sales. I fail to understand the logic of such

observation because the assessee in this case is a manufacturer and purchased goods @4% VAT and 12.5% VAT depending upon the quantity and nature of goods required by it and has finally sold the goods chargeable to VAT @12.5%. Now the AO riding on such observation about VAT rates suddenly went ahead to make the disallowance @10% on the purchases made by the assessee during the year.

17. There is no discussion about the sundry creditors as was the issue before the Tribunal was for A.Y. 2008-09. Only basis of the impugned addition/ disallowance is the observation of the AO about the change of VAT rates which has no logic at all. However, it also remains an undisputed fact that the assessee did not furnish the requisite details as called for by the AO from time to time and by the ld. CIT(A). Therefore, to some extent, the assessee was also at fault by not providing the requisite information. However, disallowance @10% of purchases without any conclusive evidence will be too harsh and not be justified in the present state of facts. I note that Net Profit rate declared by the assessee for A.Y.2007-08 and A.Y. 2009-10 is 1.98% and 2.28% respectively. However, in order to end the litigation, I deem it proper to estimate the net profit rate of 3.5% on the gross sales declared by the assessee for the year under consideration and the amount calculated over and above the net profit declared in the audited profit and loss account would be sustained as an addition in the hands of assessee. To bring clarity, for A.Y. 2007-08 on the gross sales of

Rs.2,71,55,215/-, net profit @3.5% would amount to Rs.9,40,432/- and the net profit declared by the assessee in the profit and loss account is Rs.5,37,096/-. So the difference of the amount, i.e. Rs.4,12,336/- is sustained as an addition for A.Y. 2007-08.

18. So far as A.Y. 2009-10, 3.5% of gross sales of Rs.4,12,60,323/- comes to Rs.14,44,111/- and the net profit declared by the assessee in the profit and loss account is Rs.9,41,225/- and therefore difference of Rs.5,02,886/- is the addition sustained in the hands of assessee for A.Y.2009-10. Accordingly, the common grounds raised on merits for both the assessment years are partly allowed as per terms indicated above.

19. In the result, both the appeals of the assessee are partly allowed.

Order pronounced on this 03<sup>rd</sup> day of December, 2024.

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 03<sup>rd</sup> December, 2024.  
*Satish*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “**SMC**” बेंच,  
पुणे / DR, ITAT, “**SMC**” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.