

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.1237/Ahd/2024
Assessment Year : 2014-15**

Sanjay Patel Krishna Mill Compound Station Road Unjha, Mehsana Gujarat 384 170 PAN : ALPPP 5864 K	Vs.	ITO, Ward-1 Patan.
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(Applicant)		(Responent)
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Assessee by	:	Shri Parimalsingh B. Parmar, AR
Revenue by	:	Shri Prathvi Raj Meena, CIT-DR

सुनवाई की तारीख / **Date of Hearing** : **10/12/2024**
घोषणा की तारीख / **Date of Pronouncement**: **19/12/2024**

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld.Commissioner of Income (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “Ld.CIT(A)”] dated 03.5.2024 passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Asst.Year 2014-15.

2. The assessee has raised the following grounds for challenging the impugned order of the ld.CIT(A) as under:

- 1. The Ld. CIT(A) has erred in law and on facts of the case in dismissing the matter in-limine on the ground of delay without adjudicating merits of the case.*
- 2. The Ld. AO has erred in law and facts of the case in reopening the assessment u/s. 147 of the Act. Under the facts and circumstances of the*

case, the action of reopening is without jurisdiction and is not permissible either in law or on facts.

3. *The Ld. AO has erred in law and facts of the case in making addition of Rs.5,23,99,969/- u/s. 68 of the Act.*
4. *The Ld. AO has erred in law and facts of the case in making addition of Rs 5,23,99,969/- as unexplained cash credit in books of accounts u/s. 68 of the Act on the basis of credit entries in bank account. It is well settled that bank statement/passbook is not considered as books of account.*
5. *The Ld. AO has erred in law and facts of the case in adding all the credit entries in the bank account without considering the debit entries. It is well settled that income tax can be levied on income and not the gross receipts.*
6. *The Ld. AO has erred in law and facts of the case in considering the return of income filed in response to notice u/s. 148 of the Act as non-est on account of delay in filing return despite there being no such provision in the Act.*
7. *The Ld. AO has erred in law and facts of the case in considering income of Rs.14,58,324/- as per original invalidated return of income while computing assessed income instead of income of Rs.12,59,310/- as per return of income filed in response to notice u/s. 148 of the Act.*
8. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
9. *The Ld.AO has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C/D of the Act.*
10. *The Ld. AO has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty proceedings u/s. 271(l)(c) of the Act.*

3. After going through the grounds of appeal, it is stated by the ld.counsel for the assessee that primary challenge of the assessee is against dismissal of the appeal of the assessee by the ld.CIT(A) in *limine* on the ground of delay in filing appeal before the ld.CIT(A) by 159 days. The ld.counsel for the assessee submitted that the assessee did file an application for condonation of the impugned delay 159

days, pointing out various reasons viz. (i) the assessee was under arrest by VAT Department and was in judicial custody from August, 2020 to April, 2021, (ii) the accountant who was handling the accounts and legal matters of the assessee was expired during COVID period, and that (iii) the assessee was staying in remote village, viz. Unjha where availability of good accountant and advocate is very difficult. All these reasons are attributed for the delay in filing appeal before the appellate authority. He drew our attention to page no.4 of the Id.CIT(A)'s order where he recorded the reasons given by the assessee during the appellate proceedings for condonation delay as under:

“1) As informed by the department, my case was selected for scrutiny on the basis of information flagged by the DIT (Systems) on the insight portal and shared by the ADIT Mehsana. The case was reopened U / s 148. First Notice was issued on 31.03.2021. Subsequent Notice U/s 142(1) was issued on 24/06/2021. However in August 2020 I was arrested by Gujarat VAT department for VAT related offence. I was in judicial custody till April 2021. After my release I was fully occupied in attending to courts and VAT department for case against me. Meanwhile my accountant, who was handling all these accounting and legal matter expired in March 2021 due to COVID. I was heavily reliant on him for legal compliance. My father is very senior citizen and he was unable to grasp the seriousness of the matter, being a person of limited education. This had severely crippled my working. A small town like Unjha have no good accountant or Advocate who can handle this type of matter.

2) All these circumstances had led me in not attending the Income Tax hearings and The ITR was filed after 30 days of receipt of notice i.e. on 27.01.2022. Subsequently details in response to notices U/ s 142(1) were also filed. In the said letter my consultant had specifically mentioned the new email-id. The same was also changed on the Income Tax Portal. However, till date no notices are received on the new email id of jdeliwala@gmail.com. However on accidental discovery of mail I had come to realize that Asst. Order had already been passed.

3) Although the assessment order was passed on 26.03.2022, it was not known to me as it was faceless assessment and I was not even aware about it. It is only after coming to knowledge about the same from accidental discovery. I have received a message on phone that penal order U / s 271(1)(c) was passed. Only thereafter I became aware of my liability. Till then the normal time of filing of appeal had long passed. As I became aware of the order only now, I hastened to file my appeal.

In the given case, I humbly request your honor to give me one more opportunity on the ground of natural justice and condone the delay of 7

months in filling of appeal for AY. 2014-15 and oblige. I hope your honor will accede to my request."

4. Accordingly, the ld.counsel for the assessee, based on the pleadings of the assessee submitted that there is no deliberate negligence or mala fide on the part of the assessee to get the appeal filed before the Tribunal late by 159 days, because nothing would be gained by the assessee for late filing of the appeal before ld.CIT(A). He accordingly prayed for condonation of the impugned delay of 159 days, and give direction to the ld.CIT(A) to adjudicate the appeal on merit by giving reasonable opportunity to the assessee.

5. On the other hand, the ld.DR supported the order of the ld.CIT(A) and submitted that the assessee failed to give sufficient reason for the impugned delay, the ld.CIT(A) had discussed the issue in detail on the issue, and rightly dismissed the appeal of the assessee.

6. We have considered the submissions of both parties regarding the issue of condonation of delay, and gone through the order of the ld.CIT(A). While the learned CIT(A) discussed this issue in detail and concluded that the reasons attributed by the assessee were not sufficient to condone the delay and hence dismissed the assessee's appeal in *limine*, we are of the opinion that such reasons cannot be dismissed lightly, particularly in light of the substantial issue raised by the assessee.

We are equally mindful that no assessee would willingly forgo their right to appeal, especially when a significant addition of more than Rs.5.50 crores is at stake. The financial implications of not pursuing the legal remedy further would be disproportionate and burdensome for the assessee. This is particularly pertinent when the

assessee claims to possess sufficient evidence to substantiate its case before the learned CIT(A) and succeed in the matter.

7. Before us, the assessee has also filed a paper book containing 205 pages of documents to demonstrate that the impugned addition made by the Revenue authorities is untenable in law. Considering these facts, we adopt a lenient view to the reasons provided for the condonation of delay in the application filed before the learned CIT(A).

8. Therefore, considering the above, and in the absence of any mala fide intent or gross negligence on the part of the assessee, in the interest of justice, we condone the delay of 159 days in filing the appeal before the learned CIT(A). We remand the matter to the file of the learned CIT(A) for fresh adjudication on its merits.

9. The assessee is directed to comply with the notice to be issued by the learned CIT(A) and avoid seeking unwarranted adjournments to ensure expeditious disposal of the matter.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Date : 19.12.2024