



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 833/Rjt/2024

Assessment Year: (2021-22)

(Hybrid Hearing)

Vipulbhai Shambhubhai Ramani At. Virnagar, Tal: Jasdan, Rajkot – 360060	Vs.	ITO, Ward – 2(1)(2) IT office, new aayakar bhawan, vatiaka, Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AWIPR8457J		
(Assessee)		(Respondent)

Assessee by	Shri Kalpesh Doshi, Ld. AR
Respondent by	Shri Sanjay Punglia, Ld. CIT (DR)
Date of Hearing	13 / 01 /2025
Date of Pronouncement	20/ 01/2025

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to assessment year 2021-22, is directed against the order passed by the Commissioner of Income Tax(Appeals), vide order dated 08.03.2024, which is turn arises out of an assessment order passed by the Assessing Officer, under section 143(3) of the Income Tax Act, 1961(hereinafter referred to as “the Act”), dated 15.12.2022.

2. The appeal filed by the assessee for the Assessment Year 2021-22, is barred by limitation by 147 days. The assessee has moved a petition requesting the Bench to condone the delay. The learned Counsel for the assessee explained the delay stating that assessee`s wife, Smt. Kailashben Vipulbhai Ramani was ill and suffering severe illness and due to such bonafide reason, assessee was not able to



attend his day to day work and was managing her health issues. Hence, due to this reason, the appeal could not be filed within prescribed time limit. There was no *mala-fide* intention behind the late filing of appeal. Therefore, learned Counsel submitted that in the interest of justice, delay may be condoned.

3. On the other hand, Ld. DR for the revenue submitted that the assessee failed to explain the sufficient cause for delay of 147 days. Even if the assessee's wife was ill, even then this appeal could be filed, on time, as the assessee himself was not ill. Therefore, the delay of 147 days should not be condoned and appeal of the assessee may be dismissed.

4. We have heard both the parties on this preliminary issue and noted that due to severe illness of the assessee's wife, the assessee could not attend the day-to-day work for managing his income tax matters. The Medical certificates and reports are produced by the assessee in respect of severe illness of his wife, therefore, the delay of 147 days have accrued, in filing the appeal before this Tribunal. Due to severe illness of the assessee's wife, there was tension environment in his family, and therefore the assessee could not take decision to file the appeal, before the Tribunal, on time. It is well-settled law that in exercising discretion under section 5 of 1963 Act, we should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Tribunal has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance.



5. Where a case has been presented in the Tribunal beyond limitation, the applicant has to explain the Tribunal, as to what was the "**sufficient cause**" which means an adequate and enough reason which prevented him to approach the Tribunal within limitation. Before us, the assessee explained the 'sufficient cause' stating that due to severe illness of the assessee's wife, there was tension environment in his family, and therefore the assessee could not take decision to file the appeal, before the Tribunal, on time. We find that the words '**sufficient cause**' should receive a liberal construction so as to advance substantial justice where no negligence nor inaction nor want of *bona fides* is imputable to the applicant, in this regard, reliance is based on the decision of Bharat Auto Center v. CIT 282 ITR 366. Therefore, having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

6. On merit, learned Counsel for the assessee submitted that during the appellate proceedings, the learned CIT(A) has failed to issue notices to the assessee. The relevant snap shot from the portal of the Income Tax Department, is submitted in the paper book, to explain that no notice was served on the assessee, during the appellate proceedings, therefore, as result, the assessee could not attend the proceedings before Ld. CIT(A), and hence Ld. Counsel contended and that one more opportunity should be given to the assessee to present his case before the ld. CIT(A), therefore, matter may be restored back to the file of the ld. CIT(A) for fresh adjudication.

7. On the other hand, Ld. DR of the revenue does not have any objection, if the matter is remitted back to the file of the Ld CIT(A), for fresh adjudication.

8. We have heard both the parties. We find that Ld. CIT(A) has passed an ex-parte order, because the assessee did not appear before him and did not submit the relevant documents and evidences, due to non-service of notices, on the



assessee, during the appellate proceedings. We note that a perusal of the body of the impugned order, it is apparent that it is an *ex- parte* order which has been challenged by the assessee for want of proper opportunity. We are of the view that one more opportunity should be given to the assessee to plead his case before the Id CIT(A). Therefore, considering the facts and circumstances, we deem it fit and appropriate in the interest of justice and fair play, to set aside the order of the Id. CIT(A) and remand the matter back to the file of Id CIT(A) to adjudicate the issue afresh on merits. The Id. DR for the Revenue did not have any objection if the matter is remitted back to the file of the Id. CIT(A). Therefore, for statistical purposes, the appeal of the assessee is treated, as allowed.

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

Order pronounced in the open court on 20 - 01 -2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

दिनांक/ Date: 20/ 01 /2025

Copy of the Order forwarded to

- 1.The Assessee
- 2.The Respondent
- 3.The CIT(A)
- 4.CIT
- 5.DR/AR, ITAT, Rajkot
- 6.Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot