



IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "A", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER  
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2086 to 2088/PUN/2024  
Assessment Year : 2018-19

Mohd. Farooque Mohd. Rafique Bagban, Fruit Merchant Bagwan Galli, Shahada Nandurbar-425409 Maharashtra PAN : AJDPB2200K	Vs.	ITO, Ward-1, Dhule
Appellant		Respondent

Assessee by	:	Ms. Deepa Khare
Revenue by	:	Ms. Shilpa N.C.
Date of hearing	:	20.01.2025
Date of pronouncement	:	23.01.2025

**आदेश / ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The captioned three appeals pertaining to the Assessment Year 2018-19 are directed against the separate orders passed by National Faceless Appeal Centre u/s.250 of the Income-tax Act, 1961 (in short 'the Act') which inturn are arising out of the respective Assessment orders.



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2. The fact anent to ITA No.2086/PUN/2024 are that the assessee is an individual stated to be a Fruit seller working on commission basis. He filed the return of income for the A.Y. 2018-19 declaring income of Rs.8,21,210/-. The case selected for Limited Scrutiny followed by issuance of statutory notices and there was no compliance by assessee to such notices. Based on the details available with the Assessing Officer, he noticed that assessee has shown total commission income of Rs.19,70,000/- after deducting expenses of Rs.11,48,790/- with net profit at Rs.8,21,210/-. However, on the basis of SFT data, ld. AO noticed that assessee made huge cash deposits in the banks aggregating to Rs.9,79,93,295/-. Since the assessee has not maintained any books of account and there was no participation by the assessee substantiating the source of cash deposits, ld. AO made addition of Rs.78,39,472/- @ 8% on the total turnover of the assessee at Rs.9,79,93,395/-.

3. Aggrieved assessee preferred appeal before the ld.CIT(A) with a delay of about 13 months. The ld.CIT(A) dismissed the appeal *in limine* without condoning the delay.

4. Similarly, ITA Nos. 2087/PUN/2024 and 2088/PUN/2024 relate to penalty appeals where ld. AO levied



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penalties u/s.271B and 270A of the Act at Rs.1,50,000/- and Rs.13,26,143/- respectively and the assessee preferred appeals before the ld.CIT(A) with delay of about 13-14 months. The ld.CIT(A) dismissed the penalty appeals as well *in limine* by not condoning the delay.

5. We have heard both the parties and perused the record placed before us. From the perusal of the impugned orders, it would reveal that the assessee has neither participated in the proceedings before the AO nor before the ld.CIT(A). The ld.CIT(A) has basically dismissed the appeals *in limine* by not condoning the delay occurred in the appeals. The reasons attributed by the assessee for not complying with the notices are that, at the relevant point of time, assessee and his family members were under treatment due to severe effect of covid-19. He was completely in a disturbed state of mind and therefore could not hand over the notices issued by the department as well as the related documents to the counsel, which resulted into delay in preferring the appeals. Ld. Counsel for the assessee before us submitted that the assessee could not participate in the proceedings for the reasons beyond his control. Therefore, an opportunity may be granted to the assessee by remanding the issues on merit to the file of ld.CIT(A).



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6. In the instant appeals, the Id.CIT(A) dismissed the appeals *in limine* by not condoning the delay. In this context, we would like to quote the judgment of Hon'ble Supreme Court in the case of *Collector Land Acquisition Vs. MST Katiji (1987) 167 ITR 471 SC*. In the said Judgment, their Lordships have given certain principles based on which, the issue with regard to the delay can be approached and the said portion of the order of the Judgment cited *supra* is reproduced hereunder:

1. *Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, the 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.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*



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6. *It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

In light of above, we are of the opinion that delay in the instant three appeals deserve to be condoned. We therefore condone the respective delay before the Id.CIT(A). Since all the three appeals were decided *ex parte* qua the assessee, we are of the view that in the interest of justice the appeals have to be remitted back to the file of Id.CIT(A) for afresh adjudication. Ld. Departmental Representative also has no objection for the same. In view thereof, without dwelling into merits of the case and considering the facts and circumstances, the issues on merit in these appeals are being remitted to the file of Id.CIT(A) for *denovo* adjudication. Assessee is directed to provide proper email id before the authorities to ensure proper communication. Assessee is also directed to remain vigilant and not to take adjournment unless otherwise required for reasonable cause, failing which the Id.CIT(A) shall be free to proceed in accordance with law. Finding of the Id. CIT(A) are set aside and effective grounds of appeal raised by the assessee are allowed for statistical purposes.



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7. In the result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced on this 23<sup>rd</sup> day of January, 2025.

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

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

पुणे / Pune; दिनांक / Dated : 23<sup>rd</sup> January, 2025.  
*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, "A" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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