

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 331/Ahd/2019
Assessment Year 2007-08**

Bharatkumar Somabhai Patel B/h. Maheshwari Wadi, Opp. Ganj Road, Nava Bhildi, Dist. Banaskantha-385530 PAN: AEFPP7821R (Appellant)	Vs	The ITO, Ward-4, Palanpur (Respondent)
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Appellant by : None
Respondent by : Shri V.K. Singh, Sr.D.R.

Date of hearing : 02-08-2022
Date of pronouncement : 05-08-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 28.10.2010 passed by the Commissioner of Income Tax (Appeals)-XX, Ahmedabad, as against the ex parte Assessment order passed under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2007-08.

2. There is a delay of 2985 days in filing the above appeal before this Tribunal. The Affidavit filed by the assessee which reads as follows:

AFFIDAVIT

I. Bharatkumar Somabhai Patel, aged 48 years residing at B/h. Maheshwari Wadi; Opp. Ganj Road, Nava Bhildi, Dist. Banaskatha-385530 do hereby solemnly declare and state as under:

1. That I have to file an appeal before the Hon'ble Income Tax Appellate Tribunal, Ahmedabad against the order dated 28.10.2010 of the Hon'ble Commissioner of Income Tax (Appeals) - XX, Ahmedabad u/s.250 of the Income Tax Act, 1961 for Asst. Year 2007-08.

2. That I have appointed an accountant Mr. Parshottambhai Rajgor to look after the assessment proceedings for the year under consideration and to whom I have handover the notices to make due compliances. However, the accountant did not made proper submissions or compliances in response to the said notices and I was left totally unaware of the situation.

3. That I am not much educated and unaware of income tax compliances. I made gross mistake by relying on the trust of the accountant who did made proper submissions and compliances and which has resulted in the very unfavorable situation to me. Due to change of address, the notices issued for demand recovery after the completion of proceedings were received by me and due to lack of income tax knowledge, I was not able to comply with the same.

4. That, the original notices, assessment & penalty orders and other details are also kept by the accountant in his custody and I had no details of the proceedings Further, I had no knowledge of the outstanding demand from date of issue of order till the time the bank account is seized recently by the Assessing Officer. On inquiry about the seizure of the bank account, I came to know that the Assessing Officer has issued notice to the bank manager for the same due to non-payment of outstanding income tax demand. I, thereafter, appointed another tax consultant and obtained the copies of notices and assessment & penalty orders by making an application to the Assessing Officer.

5. That, I, through my accountant, might have received the order of the Hon'ble Commissioner of Income Tax (Appeals) - XX, Ahmedabad dated 28.10.2010 on 29.10.2010. However, under the above circumstances, I was not in a position to

file the appeal against the above order of the Hon'ble Commissioner of Income Tax (Appeals).

Solemnly declared on this 1st March, 2019 at Ahmedabad.

Bharatkumar Somabhai Patel

3. This case is listed for 11th time for hearing today. None appeared on behalf of the assessee today as well as in the past hearing dates. It is seen from the records, the assessee is an individual engaged in trading in insecticides and seeds. For the Assessment Year 2007-08, the assessee filed its Return of Income on 31.03.2009 declaring an income of Rs.1,50,225/-. The return was selected for scrutiny assessment. Further u/s. 143(2) and 142(1) notices were being served by the assessee on various dates as there was no response and final 7th notice u/s. 143(2) was issued on 16.12.2009 fixing the case was hearing on 23.12.2009 which was duly served upon the assessee on 18.12.2009. The assessee alongwith his Accountant Mr. Parshottambhai Rajgor appeared before the Assessing Officer only once and not furnished any details as called for by the Assessing Officer. Therefore based on the materials available on record, the Assessing Officer made various additions on account of unexplained purchase, unexplained sundry creditors and various other disallowances and determined the assessed income at Rs.54,34,300/- and also initiated penalty proceedings u/s. 271(1)(b) for non-compliance of notices u/s. 143(2) & 142(1) and also initiated penalty proceedings u/s. 271(1)(c) of the Act.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) fixed the appeal for hearing on 15.04.2010, 17.05.2010, 10.06.2010, 25.06.2010, 21.09.2010 and 26.10.2010. As there was no response to the seven notices issued to the assessee, which have been duly served to the assessee and none appeared on behalf of the assessee. Therefore the Ld. CIT(A) confirmed the additions made by the Assessing Officer with the available materials on record and thereby dismissed the appeal filed by the assessee.

4. Aggrieved against the same, the assessee is in appeal before us filing the above appeal with a delay of 2985 days. Even before this Tribunal, 10 opportunities were given to the assessee. The assessee did not respond to the hearing notices. The Affidavit filed by the assessee simply blames his Accountant Mr. Parshottambhai Rajgor. It is seen from the ex parte assessment order, the assessee along with his accountant once appeared before the Assessing Officer on 07.12.2009. But however not produced any documents or details which were called for by the Assessing Officer in his various notices issued u/s. 143(2) of the Act. It is further seen before the Ld. CIT(A) in spite of seven opportunities were given to the assessee, he has not appeared before the Ld. CIT(A) therefore the Ld. CIT(A) passed an ex parte order with available materials on records.

4.1. The present Affidavit filed by the assessee is without material on record and no reasonable cause was demonstrated by the assessee. As right from the assessment proceedings, the assessee

seems to be not cooperative for the assessment proceedings and also before the Id. CIT(A), none appeared and before this Tribunal, none appeared on behalf of the assessee. A written submission dated 23.09.2021 filed by the Authorized Representative. This is repetition of the affidavit filed by the assessee and relying upon the case laws of Hon'ble Supreme Court in the case of Collector Land Acquisition vs. Katiji & Others, 1987 AIR 1353 and in the case of N. Balakrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222 (SC) and pleaded to condone the delay of 2985 days in filing the present appeal before the Tribunal. On merits of the case also, the assessee filed a written submission dated 23.09.2021 and enclosing a Paper Book consisting of copy of one page Audited Balance Sheet of M/s. Sai Krupa Agro Centre (Prop. Shri Bhavshkumar S. Patel). Similarly, in the case of Narmada Seeds Corporation and letter of Confirmation of balance by Narmada Seeds Corporation. The assessee could not explain before us the above documents are filed before any of the lower authorities, hence same cannot be entertained by us.

4.2. It is appropriate to quote at this stage the legal maxim "VIGILANTIBUS, NON. DORMIENTIBUS, JURA SUBVENIUNT" which means, law will help only those who are vigilant. Law will not assist those who are careless of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefits of law. Thus law confers rights on persons who are vigilant of their rights. The assessee could not demonstrate the reasons for non appearance before the lower authorities as well as

before this Tribunal and the reasons stated in the affidavit filed by the assessee is not reasonable cause to condone the huge delay of 2985 days in filing the appeal by the assessee. Further there is no supporting affidavit of the so called accountant Mr. Parashottambhai Rajgor who alleged to have not intimated the receipt of the assessment order, as well as the appellate order to the assessee. In the absence of the same, the reasons given by the assessee is not convincing and therefore the delay of 2985 days in filing the above appeal cannot be condoned. Therefore the appeal is not maintainable and dismissed as in limine.

5. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 05 -08-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 05/08/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद