

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**  
*(Conducted through Virtual Court)*  
**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**

**ITA No.2224/Ahd/2018**  
निर्धारण वर्ष/ Asstt.Year : 2010-11

Smt.Rupa Maheshbhai Gandhi D-404, 5 <sup>th</sup> Floor, Dharnidhar Tower Paldi, Ahmedabad. PAN : ABUPG 5905 D	vs.	ITO, Ward-3(2)(10) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Prakash D. Shah, AR
Revenue by :	Shri R.R.Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24/05/2021  
घोषणा की तारीख /Date of Pronouncement: 01/06/2021

**आदेश/ORDER**

The above appeal filed by the assessee arises from order of the Commissioner of Income Tax (Appeals)-3, Ahmedabad dated 03.08.2018 for assessment year 2012-13.

2. The assessee in her appeal has raised the following three grounds:

*"1. That the learned CIT(A) has erred in law and facts by not admitting the appeal on account of delay in filing of the appeal of 66 days and therefore the order passed by the learned CIT(A) is bad in law and against facts and therefore the order passed by the learned CIT(A) is to be quashed.*

*2. That the learned CIT(A) has erred in laws and facts by not quashing the order passed under section 147 rws 144 as the proceedings for the reassessment is bad in law and therefore the order passed by the Id.AO is to be quashed.*

3. *That the learned CIT(A) has erred in law and fact by not deleting the addition of unexplained investment of Rs.9,05,412/- and therefore the Id.AO should be directed to delete the said addition.”*

3. The first issue is regarding non-admission of appeal due to late filing of appeal by 66 days before the Id.CIT(A).

4. In nutshell, the facts of the assessee's case is that assessment order under section 144 read with section 147 of the Income Tax Act, 1961 was passed by the AO on 21.12.2017 and determined assessed income at Rs.9,05,412/-. Against this order assessee preferred appeal before the Id.first appellate authority. The Id.CIT(A) noticed that the date of service of the assessment order on the assessee was on 26.12.2017 but assessee e-filed the appeal only on 30.3.2018, which was beyond the time limit stipulated under section 249 of the Income Tax Act. In other words, the appeal should have been filed within 30 days from the date of service i.e. on 24.01.2018, and therefore, there was delay of 66 days in filing the appeal before the Id.first appellate authority. The reason explained by the assessee for delay in filing the appeal before the Id.CIT(A) was that she was not aware about the passing of the assessment order, and the proceedings which were going on before the AO. The Id.CIT(A) was not satisfied with the explanation of the assessee for delay in filing the appeal, and observed that there was no reasonable and sufficient cause which prevented the assessee to file the appeal within the stipulated time. He accordingly rejected the delay condonation and dismissed the appeal in *limine*. Aggrieved by order of the Id.CIT(A), is now before the Tribunal.

5. Before me, the ld.counsel for the assessee reiterated submission made before ld.CIT(A). He further submitted that in the case of assessee's relative viz. Kuntalal Mahesh Gandhi for the AY 2012-13 to 2014-15, the delay of 870 days been condoned by the ld.CIT(A). He prayed that small delay of 66 days in filing the appeal be condoned and matter be remitted to the ld.CIT(A) for adjudication on merit, because the assessee has good case on hand and hope to succeed the same. The ld.DR on the other contended that the assessee failed to give any plausible reason before the ld.CIT(A), and therefore, ld.CIT(A) has rightly dismissed the appeal of the assessee.

6. I have duly considered rival contentions and gone through the record carefully. Sub-section 5 of Section 253 of the Act contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression "sufficient cause" employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld.Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. I may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

*“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 pragmatic manner.*

*4. 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.*

*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.*

*6. It must be grasped that 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.”<sup>1</sup>*

7. In the light of the above, if I consider explanation of the assessee before the Id.CIT(A), then it would reveal that the assessee was not aware about the assessment order or about the proceedings at the level of the assessment officer. Immediately, when she came into the knowledge about the order, she e-filed the appeal, and in the process delay of 66 days was occurred. To my mind, looking to the quantum of delay of 66 days, and also of the fact that on similar set of facts, in the case of relative of the assessee viz. Kuntalal Mahesh Gandhi for the A.Y.2012-13 to 2014-15, the

delay of 870 days has been condoned by the Id.CIT(A), substantial justice demands a practical approach on the part of the Id.CIT(A) in condoning the delay. It is pertinent to take note that by making delay in filing appeal before the Id.CIT(A), the assessee would not achieve anything. Thus, such delay cannot be adopted as a strategy. I condone the impugned delay, and set aside order of the Id.CIT(A). I remit all other issues to the file of the Id.CIT(A) for adjudication on merit. Needless to say, the assessee will cooperate with the CIT(A) in the appellate proceedings, and will not resort to unnecessary delay tactics.

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

**Order pronounced in the Court on 1<sup>st</sup> June, 2021 at Ahmedabad.**

**Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT**