

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 7253/Mum/2019 (Assessment Year 2008-09)

M/s. Dilip Kantilal Kapadia Aban House, 1 <sup>st</sup> Floor 25/31, Ropewalk Street Off.K.Dubash Marg Fort, Mumbai-400 023  PAN : AABPK0349K (Appellant)	Vs.	ITO-17(1)(4) Aaykar Bhawan M.K.Road Mumbai-400 020  (Respondent)
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Assessee by	Ms.Rutuja N.Pawar
Department by	Shri Anoop
Date of Hearing	19.05.2021
Date of Pronouncement	01.07.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-28 dated 28.10.2019 and pertains to Assessment Year 2008-09.

2. The grounds of appeal read as under :

1. That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in not considering the appeal of the appellant's on merits.
2. That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in not condoning the delay in filing the appeal on a bone fide ground.
3. That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in not considering the re-opening u/s. 147 of the Act which is bad in law.
4. That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding the addition of purchase aggregating to the tune of Rs.2,39,148/- as bogus purchase.
5. That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.
6. That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.

3. Brief facts of the case are that the assessee is engaged in the business of exporter of pharmaceuticals products, cotton surgical dressings. The AO has made 100% addition on account of bogus purchases by holding as under:-

2. ' This case was reopened on the basis of information received from Addl, DIT(Inv), Unit-I, Mumbai regarding information on beneficiaries in the cases of Rajendra Jain and Kamal Kishore Rathi. On examination it is found that DILIP K KAPADIA has taken accommodation entries from NAZAR during the F.Y, 2007-08.

3. In this case, as per the information received as discussed above, the case was accordingly reopened after recording reasons and taking necessary approval. Notice u/s. 148 dated 27.03.2015 was issued and duly served on the assessee. Further notices u/s. 143(2) dated 14.09,2015 & 142(1) alongwith questionnaire dated 14.09.2015 were issued requesting the assessee to furnish the details in respect of A.Y. 2008-09 and reasons were duly communicated to the assessee.

4. In response to said notices, Shri Dilip K. Kapadia, Assessee himself vide its letter dated 16.10.2015, 20.10.2015 & 07.01.2016 attended from time to time and filed various details such as details of purchases with names and addresses of suppliers, ledger & copy of the bill of M/s. Nazar Impex Pvt. Ltd.. The assessee has also submitted Brief note of Business activity, Balance sheet etc and the case was discussed with him.

5. The assessee is an individual and partner in firm M/s. Keshavlal Vajechand which is engaged in the exports of pharmaceuticals products, cotton surgical dressings etc.

6, To prove genuineness of the accommodation entries a notice u/s. 133(6) dated 03.12.2015 was also issued to M/s. Nazar Impex Private Limited. In response to the notice issued M/s. Nazar Impex Private Limited submitted various details related to Shri Dilip K. Kapadia such as copy of ledger account, copy of sale register, copy of bank statement, copy of acknowledgement of Return filed and Copy of Pan card of Shri Dilip K. Kapadia.

7. In view of the above, considering overall facts and circumstances of the case as narrated above and also taking into consideration it is hereby held that the assessee could not produce the party for verification and thereby could not justify the genuineness of the transaction. Consequently assessee has suppressed profits in lieu of inflated purchases to the tune of Rs. 2,39,148/- being 100% of alleged purchases of Rs. 2,39,148/- for the F.Y. 2007-08, relevant to A.Y. 2008-09 and the same is accordingly added back to the total income of the assessee. Penalty proceedings u/s. 271(1)(c) are separately initiated for furnishing inaccurate particulars of income and for concealing the income.

4. From the above, it is clear that AO has passed the order without any application of mind whatsoever. All necessary documents were produced to him as required. Even, the notice u/s 133(6) was duly responded.

5. Upon assessee's appeal Ld.CIT(A) dismissed the appeal in limine for non condonation of delay as under:-

5.4. In this regard in this regard, the Ld. counsel has drawn my attention to the Application for Condonation of Delay filed by the appellant along with the appeal papers. On a careful perusal of the same, I find that immediately after the impugned order was passed, the appellant had filed a rectification application u/s 154 before the AO and it was hope that the appellant would get the necessary relief before the AO. It is further stated that the rectification application u/s 154 was rejected at the AO level, against which the necessary appeal has been filed with the concerned CIT(A). However, the appellant totally forgot about the filling of appeal against the original assessment order.

5.5 On due perusal and consideration I am of the firm view that the contention of the appellant is completely untenable. I say so because, even if the rectification application was filed, the appellant could not have unilaterally presumed that there would be no need to file the regular appeal before the CIT(A). In fact, the attitude of the appellant is totally cavalier and negligent in causing the delay of more than 900 days in actually filling the appeal. In any case, the fact of the matter is that no reasonable and due cause has been demonstrated before me so as to persuade me to condone this huge delay of more than 900 days in filling of the present appeal.

5.6 Further, I observe that in the present case it is not a question of a delay of 10 or 15 days or even 100 or 500 days. The delay is almost running into a whopping 934 days. If such a huge delay is condoned, in that case, the statutory limits for filing of the appeals will be rendered totally useless and would become a standing joke.

5.7 In the circumstances therefore, I do not find that any case of sufficient cause has been successfully made by the appellant, which can be attributed to this huge and inordinate delay of 934 days in filing of the said appeal. Therefore, in the above circumstances I cannot condone the delay in filing of appeal and hence, I am constrained to dismiss the appeal without adverting to the merits of the same. The same is therefore, **DISMISSED**.

6. Against the above order assessee is in appeal before us.

7. We have heard both the parties and perused the records. We note that the AO has passed an order completely devoid of any reasoning. Thereafter, the assessee was pursuing rectification application u/s 154 of the I.T.Act. The reasonable brief of the assessee that the rectification application would succeed cannot be said to be not cogent. In these circumstances, when the petition u/s. 154 was rejected assessee filed an appeal before the Ld.CIT(A). Ld.CIT(A) has treated the reasonable cause for the delay to be not sustainable. In our considered opinion Ld.CIT(A) has completely misled himself by not considering at all the fact that the assessment order passed by the AO was completely devoid of any reasoning whatsoever. Despite the assessee providing all the documentary evidence as required by the AO and the fact that notice u/s. 133(6) having also been complied with. Hence, the reasoning stated by the AO in making the 100% addition is completely bereft of any reasoning whatsoever. He has mentioned that after considering the overall facts and circumstances, he is making 100% addition. In our considered opinion this is not any reasoning whatsoever. Hence, assessee belief that he will succeed in the alternative remedy cannot be brushed aside. In these circumstances, in our considered opinion, the delay of filing appeal before the Ld.CIT(A) was on account of cogent and reasonable reasoning and the same ought to have been condoned. The same is as such condoned.

8. Accordingly, we remit the issue to the file of Ld.CIT(A). Ld.CITA) is directed to consider the issue afresh on merits after giving the assessee and opportunity of being heard.

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

Pronounced in the open court on 01.07.2021

Sd/-  
( AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/07/2021

Sr.PS. Thirumalesh

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai