

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL APPLICATION NO. 1611 of 2020****In F/TAX APPEAL NO. 3039 of 2020****[On note for speaking to minutes of order dated 05/01/2021 in
R/CA/1611/2020]**

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ADARSH CO-OP BANK LTD.

Versus

INCOME TAX OFFICER, SURENDRANAGAR CIRCLE

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Appearance:

MS VAIBHAVI K PARIKH(3238) for the Applicant(s) No. 1

MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 05/02/2021

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

By this Note for Speaking to Minutes filed at the instance of the applicant, it is pointed out that inadvertently in paragraph 14 of the order dated 5th January 2021 passed in the R/Civil Application No.1611 of 2020, instead of the '*Gujarat Advocates Welfare Fund*', it has been mentioned as the '*Gujarat High Court Advocates Welfare Fund*'.

Let the '*Gujarat Advocates Welfare Fund*' be shown in place of the '*Gujarat High Court Advocates Welfare Fund*' appearing in paragraph 14 of the order dated 5th January 2021 passed in the R/Civil Application No.1611 of 2020.

The registry shall effect the necessary corrections at the earliest and issue a fresh writ of the order. The Note stands disposed of accordingly.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

A. B. VAGHELA



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Date : 05/01/2021

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this application, the applicant – original appellant has prayed to condone the delay of 342 days in filing the Tax Appeal (Stamp) No.3039 of 2020, questioning the legality and validity of the order passed by the Income Tax Appellate Tribunal, Rajkot Bench, Rajkot, dated 2nd August 2018 in the I.T.A. No.990/RJT/2010 for the Assessment Year 2007-08.

2. In the application seeking condonation of delay, the following averments have been made :

“1. This Civil Application is being moved for condonation of delay in filing tax appeal challenging the order dated

02.08.2018 passed by the Income Tax Appellate Tribunal (ITAT for short) in ITA No. 990/Rjt/2010 for the Assessment Year 2007-08. The said order was communicated to the applicant on 17.10.2018. The period of limitation for filing the appeal before this Hon'ble Court under the provisions of Section 260A(2)(a) of the Income-tax Act, 1961 is 120 days from the date of communication of the order appealed against. This appeal was, therefore, (subject to what is stated hereinafter) required to be filed on or before 13.02.2019. The same, however, came to be filed on 22.01.2020. Thus, there is delay of 342 days in filing the said tax appeal. The reason for the delay is as under :

2. The impugned order passed by the ITAT in ITA No. 990/Rjt/2010 was communicated to the applicant on 17.10.2018. However, the Branch Manager, who was looking after such official communication had retired around the same time. Hence, when the order was received, it was put away by a clerk instead of being forwarded to the tax consultant. It was only sometime in June 2019 that it was found by another employee who realized its importance and hence the order came to be forwarded to the office of an advocate Mr. Rajendra Shah for perusal and further action in July 2019. However, the officials of the applicant were not aware that the advocate had passed away and that his son who was not conversant with the issues of the applicant was looking after all the matters. As all documents were regularly sent to this office, the applicant assumed that action would be taken. However, no action was taken on the said order by the advocate. In this manner the order was

overlooked and no advice was tendered to the applicant. It was only upon inquiry by the applicant sometime in October 2019 that the advocate perused the order and advised the applicant to approach the advocate specialising in tax. After Diwali, the applicant approached an advocate at Ahmedabad in the end of November 2019 who advised that a tax appeal would have to be filed. The officer of the applicant returned to Surendranagar and dispatched the relevant papers at the office of the advocate. The limitation period for filing the tax appeal was over by the time the relevant papers were sent at the office of the advocate for the applicant, and the said tax appeal came to be filed on 22.01.2019.

3. Under the circumstances stated above, the delay of 342 days in filing the said tax appeal is mainly on the ground that the branch manager of the applicant had retired and the advocate of the applicant had passed away. Therefore, there is a good and sufficient reason to condone the delay.

4. From the above facts, it is most respectfully submitted that 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 non-deliberate delay. It is further submitted that the tax appeal may kindly be decided on merits rather than rejecting the same on the ground of delay and laches as the cause of substantial justice shall prevail over the technical considerations.”

3. The application seeking condonation of delay has been opposed by the Revenue by filing the affidavit-in-reply, stating as under :

“3. The applicant bank has filed this application seeking condonation of delay on the ground that they were unaware about the matter due to retirement of the Branch Manager as also on account of death of their advocate. It is submitted that the assessee has misrepresented the facts. The assessee Bank was aware about their matters during the period in which the present appeal is to be filed. It may kindly be noted that the same assessee Bank was in appeal which was pending before the Hon’ble ITAT for AY 2007-08 and the said appeal was represented by the authorized representative of the applicant bank on 21.10.2019. Therefore, the contention of the applicant that they were not aware about the pending proceeding is far from fact and reflects the intention of the lame excuse. The reasons given being factually incorrect may not be treated as sufficient ground to condone the delay.

4. It is submitted that the applicant bank is aggrieved by the ex-parte order dated 2.8.2018 in ITA No. 990/RJT/2010, under which the Hon'ble ITAT has rejected the ITA without going into the merits of the matter. The ITAT has observed that despite notice and number of opportunities, no one appeared or sought for an adjournment.

5. Moreover, following observations are made by ITAT in the order dated 2.8.2018:

“Before parting it would be appropriate to add that in case the assessee is able to show that there existed a reasonable cause for non-representation on the date of hearing, it would be at liberty, if so advised, to seek for recall of this order.”

From the above observations, it is clear that the Tribunal gave an opportunity to the assessee bank to represent if there is genuine cause for non attendance. The Tribunal showed their willingness to recall the ex-parte order if the reasonable cause exists. Thus there is no violation of principles of natural justice as alleged. The applicant however without seeking recall has filed the appeal u/s.260A. :

6. It is submitted that in the Tax appeal filed u/s 260 A of the Act, the applicant has raised the question of law involving merits of the additions ignoring the fact that the ITAT, without going into the merits of additions has rejected the appeal reserving the liberty to the assessee to recall the order. As there are no merits in the appeal filed u/s 260A, the delay may not be condoned.

7. It is submitted that thus there are no merits in the application seeking condonation of delay. The grounds stated are not sufficient to condone the delay. The present application therefore may kindly be rejected and delay occasioned in filing the appeal may not be condoned.”

4. We have heard Mr.Tushar Hemani, the learned counsel appearing for the applicant, and Mr.Manish Bhatt, the learned senior counsel appearing for the Revenue.

5. Mr.Hemani submitted that the application seeking condonation of delay could not be said to be lacking in bonafide as alleged by the Revenue. He pointed out that the applicant herein is a cooperative bank. The Branch Manager, who at the relevant point of time was looking after the litigation, retired, and a new appointee assumed the charge of the office of the Branch Manager of the bank. He pointed out that one Mr.Rajendra Shah, a practicing Tax Advocate, was engaged to look into and handle the litigation. Mr.Rajendra Shah passed away and this fact did not come to the notice of the bank.

6. Mr.Hemani would submit that in such circumstances, none appeared even before the Tribunal. According to Mr.Hemani, even in such circumstances, the Tribunal ought not to have dismissed the appeal for non-prosecution. The Tribunal was otherwise obliged to consider the appeal on its own merits even in the absence of any legal representative on behalf of the bank. According to Mr.Hemani, one chance may be given to the bank to pursue the appeal filed before the appellate tribunal, and that is possible only if this Court condones the delay, allows the tax appeal and remits the matter to the appellate tribunal.

7. On the other hand, this application has been vehemently opposed by Mr.Bhatt, the learned senior counsel appearing for the Revenue. He would submit that no case is made out for

condonation of delay of 342 days in filing the Tax Appeal. Mr.Bhatt would submit that the averments made in this application do not constitute any sufficient cause for the condonation of delay. Mr.Bhatt submits that the bank could be said to be absolutely careless and negligent in pursuing the matter before the appropriate authority. Mr.Bhatt would submit that few averments made in the application seeking condonation of delay are factually incorrect.

8. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether this Court should condone the delay of 342 days in preferring the Tax Appeal.

9. In the overall view of the matter, we have reached to the conclusion that we should give one opportunity to the applicant. The applicant is a cooperative bank and is not going to derive any personal benefit if the delay is condoned and the Tax Appeal is heard on the questions of law as proposed in the memorandum of the Tax Appeal.

10. We should not overlook the fact that there has been some lethargy on the part of the bank in pursuing the matter. However, the lethargy is not of such a type that the delay should not be condoned.

11. It appears that the bank filed its return of income on 31st October 2007 declaring the total income at Rs.57,28,800=00.

The return was processed under Section 143(1) of the Act on 19th February 2008 assessing the income at Rs.57,28,800=00. The Assessing Officer recorded his satisfaction based on a remark made in the audit report for the Assessment Year 2006-07 that artificial profit of Rs.75,05,000=00 was shown and the income thereby had been reduced to that extent in the Assessment Year 2007-08. A notice under Section 148 of the Act was issued dated 23rd April 2009. The notices under Sections 143(2) and 142(1) of the Act were issued on 14th September 2009. Ultimately, the Assessing Officer finalized the assessment treating the transaction of purchase and subsequent sale of the IDFC Deep Discount Bond and UPSFC as not in the nature of banking but as a speculation business. Ultimately, the Assessing Officer made an addition of Rs.75,05,000=00. The appeal filed by the applicant herein before the Commissioner of Income Tax (Appeals) also came to be dismissed. Ultimately, the appeal was filed before the Tribunal, and in the absence of any counsel appearing for the applicant, the appellate tribunal dismissed the appeal in *limine*.

12. In the aforesaid view of the matter, we are inclined to condone the delay and hear out the Tax Appeal on merits, i.e. on the two questions of law as proposed.

13. In the result, this application is allowed. The delay of 342 days in filing the Tax Appeal is hereby condoned. However, we would like to impose costs on the applicant bank.

14. We direct the bank to deposit an amount of Rs.50,000=00 with the Gujarat High Court Advocates Welfare Fund. Upon

producing the receipt of the deposit of the amount of costs, the registry shall give a '*pucca*' number to the Tax Appeal and notify the same for admission.

(J. B. PARDIWALA, J.)

(ILESH J. VORA, J.)

/MOINUDDIN

