

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.148/Ahd/2018
(Assessment Year: 2009-10)

Charuben Jitendrarai Mehta Tropical Lagoon, Tower No.2, Flat No. 2604, G. B. Road, Anandnagar, Kevesar, Thane(West), Maharashtra-400615	Vs.	ITO Ward-1(2), Bhavnagar
[PAN No.ADOPM4398N]		
(Appellant)	..	(Respondent)

I.T.A. No.12/Ahd/2021
(Assessment Year: 2009-10)

Bimal Jitendra Mehta Tropical Lagoon, Tower No.2, Flat No. 2604, G. B. Road, Anandnagar, Kevesar, Thane(West), Maharashtra-400615	Vs.	ITO Ward-1(2), Bhavnagar
[PAN No.AATPM1782E]		
(Appellant)	..	(Respondent)

I.T.A. No.13/Ahd/2021
(Assessment Year: 2009-10)

Charuben Jitendrarai Mehta L/H. of Jitendra Narottamdas Mehta, Tropical Lagoon, Tower No.2, Flat No. 2604, G. B. Road, Anandnagar, Kevesar, Thane(West), Maharashtra-400615	Vs.	ITO Ward-1(2), Bhavnagar
[PAN No.ACKPM9382P]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M. J. Shah & Shri Rushin Patel, A.Rs.
Respondent by:	Shri R. R. Makwana, Sr. D.R.

Date of Hearing	13.03.2023
Date of Pronouncement	22.03.2023

ORDER

These three appeals filed by the different assessees are against the order passed by the Ld. CIT(Appeals)-6, Ahmedabad on different dates for A.Y. 2009-10.

First we are taking up ITA No. 148/Ahd/2018 for A.Y. 2009-10

2. The grounds of appeal raised by the assessee are as under:

“1. The learned C.I.T.(Appeals) erred in law and on facts in confirming the disallowance of loss of Rs.29,76,903/- made by the Assessing Officer without appreciating the fact that assessee has never claimed loss/set off loss in her return of income filed for Asst. Year 2009-10.

The appellant reserves its right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing.”

3. The assessee filed return of income declaring total income of Rs. 1,41,930/- on 26.02.2010. The same was processed under Section 143(1) of the Act. The case was reopened under Section 147 of the Act and notice under Section 148 was issued on 29.03.2016 which was duly served upon the assessee. Investigation Directorate, Ahmedabad has conducted various surveys under Section 133A of the Act on the premises of several share brokers. Primarily the Investigation Wing after analysis of the data received from National Stock Exchange (in short “NSE”) concluded that the Client Code Modification (in short “CCM”) facility is being misused by various clients for tax evasion. This was done in the connivance with the broker. List of such persons who have used CCM and took benefit by shifting out profit/shifting in losses to reduce the taxable income was shared by the Investigation Directorate, Ahmedabad. This list also includes the name of the assessee. After that, trade data related to all the transactions entered by the assessee in the cash, derivative and F&O segment in various exchanges were

also analyzed by the Revenue Office after recording the satisfaction, the case of the assessee was reopened. On the data analysis, it was found that the assessee also misused the CCM facility to book the contrived losses to the tune of Rs. 29,76,903/-. The assessee was given show-cause notice under Section 142(1) of the Act dated 28.11.2016. The assessee filed written apply dated 05.12.2016 thereby stating that the assessee had not done even a single transaction at Mangal Keshav Securities Ltd. The Assessing Officer after taking cognizance of the written submissions of the assessee, made disallowance of Rs. 29,76,903/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

5. The Ld. A.R. submitted that the Assessing Officer raised doubts based on shares transactions codes changed by Broker Mangal Keshav Securities Ltd. The Assessing Officer relied on the report of Income Tax Department and made disallowance of Rs. 29,76,903/- without application of mind and only on the basis of suspicions and assumptions. The Ld. A.R. submitted that the assessee submitted before the Assessing Officer that the assessee never entered in the so-called transaction of shares, hence not booked loss on shares in books of account and Income Tax Return for which disallowance was made by the Assessing Officer. The Ld. A.R. submitted that the Change of Code is unilateral act on part of the Broker i.e. Mangal Keshav Securities Ltd. and the assessee's books of account and Income Tax Return has nothing to do with it. The Ld. A.R. submitted that before the Assessing Officer the assessee submitted copy of Audit Report for F.Y. 2007-08 as well as copy of HDFC Bank Statement for the year 2007-08 and 2008-09 as well as bank statement.

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The Ld. A.R. submitted that the ledger account for A.Y. 2007-08 and 2008-09 obtained from Mangal Keshav Securities Ltd. was also submitted before the Assessing officer. The Ld. A.R. submitted that the share broker Mangal Keshav Securities Ltd. has done code change process but there is no documentary proof from the client that the same was done for the sake of client. This clearly proves the genuineness of the assessee's act of not "Recording Short Term Capital Loss" in the books of account as the assessee not entered into share transactions of Code Change Process i.e. CCM. This is a proof that it is unilateral part of Mangal Keshav Securities Ltd. The Ld. A.R. further submitted that the assessee never claimed Short Term Capital Loss in income tax return filed for A.Y. 2009-10 and therefore, there cannot be disallowance of Short Term Capital Loss which is not recorded in books of accounts and not claimed in income tax return. The Ld. A.R. submitted that the assessee produced complete books of account from which it was proved that the assessee had not entered into share transaction with Mangal Keshav Securities Ltd. The Ld. further submitted that as per norms before entering into shares transactions Broker has to obtain deposit from client which he has to obtain the delivery instruction in writing and Broker has to issue bills. The assessee never made deposit of Single Rupee with broker and not given delivery instructions. The Ld. A.R. further submitted that the voluminous/huge changes of shares transactions codes was unilateral act on part of the Broker and it has nothing to do with the assessee. The Ld. A.R. further submitted that the assessee never booked losses of CCM. The Ld. A.R. pointed out at the time of hearing the details of return filed before the Revenue Authorities and the Audit Report. The Ld. A.R. further submitted that the assessee has files Police complaint against the said Mangal Keshav Securities

Ltd. on 05.10.2019. Thus, the Ld. A.R. submitted that the Assessing Officer as well as the CIT(A) has not taken cognizance of that the assessee never had any transaction with the Broker Mangal Keshav Securities Ltd. and the assessee's name in Investigation Report was not justifiable. Thus, the disallowance made by the Assessing Officer does not sustain.

6. The Ld. D.R. submitted that the assessee has claimed speculative losses and the assessee's involvement in Client Code Modification was pointed out by the Investigation Agency. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. From the perusal of records it can be seen that before the Assessing Officer while filing the written submissions the assessee submitted that the assessee never done any transactions with Mangal Keshav Securities Ltd. But while written submissions filed before the CIT(A), the assessee has given the ledger account obtained from Mangal Keshav Securities Ltd. The submissions of the assessee that the assessee never dealt with the Broker Mangal Keshav Securities Ltd. but at the same time in the Report of Investigation Agency the assessee's name has been pointed out alongwith the assessee's CCM with that of M/s. Pathpioneer Management Service Pvt. Ltd. through Mangal Keshav Securities Ltd. i.e. the Broker and the same was pointed in the Investigation Report relating to Client Code Modification. The submissions of the assessee that the assessee never claimed loss in this year with the supporting return of income and the Audit Report will never justify that the assessee has not benefitted from CCM. The Assessing Officer as well as the CIT(A) has taken cognizance of the ledger of the Brokers while confirming the

addition/disallowance as well as the assessee has also not establish his case that there was no involvement whatsoever as detailed in the Investigation Report with the Broker Mangal Keshav Securities Ltd. Besides this the assessee has also not given details as to in which shares / scrips and through which broker the assessee has dealt with the trade-in-shares and securities. From the perusal of the records it is seen that the ledger of the Mangal Keshav Securities Ltd. in respect of assessee has been issued on 03.03.2008 till 15.07.2008. The assessee also has given the Bank Statement from 20.04.2007 till 01.04.2009 which is a regular account and not Demat Account. Thus, the assessee has not given the details about the share transactions and assessee's non-involvement in the CCM. The assessee has not established as to why the assessee was not involved in CCM. The assessee has submitted return of income wherein current year loss was shown at Rs. 1,50,000/-. Thus, the Assessing Officer as well as CIT(A) was right in adding Rs. 29,76,903/- to the income of the assessee. The contention of Ld. A.R. that the assessee never claimed loss of Rs. 29,76,903/- and the assessee never paid any amount to the Broker Mangal Keshav Securities Ltd. was not justified by the assessee from any record. On the contrary, ledger bills of the Broker reveal the name of the assessee in respect of share trading / transaction. Therefore, the contentions taken by the Ld. A.R. are rejected. Hence, ITA No. 148/Ahd/2018 is dismissed.

8. Now coming to ITA No. 12/Ahd/2021. There is a delay of 1112 days in filing the appeal for which the assessee has given the chart explaining as to why the delay is occurred. The chart is reproduced hereinbelow:

*ITA No. 148/Ahd/2018 &
ITA Nos. 12&13/Ahd/2021
Charuben Jitendrarai Mehta & Bimal Jitendra Mehta
& Charuben Jitendra Mehta vs. ITO
Asst.Year-2009-10*

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“Chart Explaining Delay in Filing the Appeal before Hon'ble ITAT

<i>Particulars</i>	<i>Date/days</i>	<i>Remarks/Explanation</i>
<i>Date of CIT(A)'s order</i>	<i>01.12.2017</i>	
<i>Date of receipt of CIT(A)'s</i>	<i>01.12.2017</i>	<i>Assumed since not known</i>
<i>Due date for filing appeal before Hon'ble ITAT</i>	<i>30.01.2018</i>	
<i>Actual date of filing appeal before Hon'ble ITAT</i>	<i>15.02.2021</i>	
<i>Total delay</i>	<i>1,112 days</i>	
<i>Delay before Covid Period</i>	<i>774 days (From 31.01.2018 to 14.03.2020</i>	<p><i>Appellant handed over the papers to CA Mehul Vora for filing appeal who in turn handed over and delegated the same to his office staff personnel, namely, Mr Chitrak Parekh.</i></p> <p><i>Since the orders passed, at around the same time, by lower authorities in the case of the appellant and his relative, namely, Charuben Jitendra Mehta were almost identical in terms of its content, the authorities passing the orders and addresses of the assessee, Mr. Chitrak Parekh looked through the papers hastily believing that there is only one appeal to be filed for Charuben J. Mehta and not two separate appeals.</i></p> <p><i>Due to this inadvertent mistake and miscommunication between the Chartered Accountant and his office personnel, Charuben J. Mehta's appeal came to be filed within time while the appellant's appeal remained to be filed.</i></p> <p><i>It was only in 2021 when the appellant enquired about the appeal of the appellant not being listed for hearing for a long time and upon verifying the appeal papers again, the inadvertent mistake could be realised and rectified by filing this appeal belatedly.</i></p>

		<p><i>It is most humbly submitted that, there could be no malafide intention or deliberate delay in filing this appeal belatedly when Charuben J Mehta's appeal was filed within due time and the delay shall be considered to have been occurred due to reasonable and sufficient cause, which may kindly be condoned.</i></p> <p><i>Detailed explanation is provided in the appellant's application dated 11.02.2023 and Mr. Chitrak Parekh's affidavit dated. 30.01 2023.</i></p>
<p><i>Delay covered under Covid Period</i></p>	<p><i>338 days (From 15.03.2020 to 15.02.2021)</i></p>	<p><i>Considering the hardships faced by everyone during the outbreak of Covid-19 pandemic, the Hon'ble Supreme Court, vide its order dated 10.01.2022 in MA No. 21/2021 in SMW(C) No. 3/2020 (copy attached herewith), has given a general exemption of the period from 15.03.2020 to 28.02.2022 and has held that the said period shall stand excluded for the purpose of limitation.</i></p> <p><i>In view of the same, it is most respectfully submitted that, the period covered under Covid period may be excluded in the computation of period of delay or in the alternative, may kindly be condoned considering the widely known difficulties of Covid-19 pandemic</i></p>

9. The Ld. D.R. vehemently oppose and submitted that the delay should not be condoned.

10. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has filed the appeal in Charuben Jitendra Mehta for A.Y. 2009-10 within the statutory limit. But in case of Bimal Jitendra Mehta due to inadvertent mistake and miscommunication between the Chartered Accountant and his office personnel the appeal in Bimal

*ITA No. 148/Ahd/2018 &
ITA Nos. 12&13/Ahd/2021
Charuben Jitendrarai Mehta & Bimal Jitendra Mehta
& Charuben Jitendra Mehta vs. ITO
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Jitendra Mehta was not filed. It appears to be genuine reason hence, delay is condoned.

11. Further, the issue contested herein is identical to ITA No. 148/Ahd/2018 wherein in the Investigation Report the name of Bimal Jitendra Mehta has been given in respect of share Boker Mangal Keshav Securities Ltd. and the CCM to that extent. In the present case also the assessee could not establish that the assessee was not involved in CCM. The assessee in the return of income for A.Y. 2009-10 submitted current year losses at Rs. 3,44,786/-. Thus, the finding given hereinabove in ITA No. 148/Ahd/2018 is applicable in present case as well. Hence, ITA No. 12/Ahd/2021 is dismissed.

12. In respect of ITA No. 13/Ahd/2021 there is a delay of 1001 days in filing the appeal for which the assessee has given the chart explaining as to why the delay is occurred. The chart is reproduced hereinbelow:

“Chart Explaining Delay in Filing the Appeal before Hon'ble ITAT

<i>Particulars</i>	<i>Date/days</i>	<i>Remarks/Explanation</i>
<i>Date of CIT(A)'s order</i>	<i>23.03.2018</i>	
<i>Date of receipt of CIT(A)'s</i>	<i>23.03.2018</i>	<i>Assumed since not known</i>
<i>Due date for filing appeal before Hon'ble ITAT</i>	<i>22.05.2018</i>	
<i>Actual date of filing appeal before Hon'ble ITAT</i>	<i>15.02.2021</i>	
<i>Total delay</i>	<i>1,001 days</i>	
<i>Delay before Covid Period</i>	<i>663 days (From 23.05.2018 to 14.03.2020)</i>	<i>Appellant handed over the papers to CA Mehul Vora for filing appeal who in turn handed over and delegated the same to his office staff personnel, namely, Mr Chittrak Parekh. Since the orders passed by lower</i>

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ITA Nos. 12&13/Ahd/2021
Charuben Jitendrarai Mehta & Bimal Jitendra Mehta
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		<p><i>authorities in the case of appellant in the capacity of legal heir of Jitendra N. Mehta and in her own case were almost identical in terms of its content, the authorities passing the orders and addresses of the assessee, Mr. Chitrak Parekh looked through the papers hastily believing that it is the same case of Charuben J. Mehta for the same year for which he had already filed appeal in January 2018 and therefore, did not file a separate appeal again.</i></p> <p><i>Due to this inadvertent mistake and miscommunication between the Chartered Accountant and his office personnel, Charuben J. Mehta's appeal for her own case came to be filed within time while the appellant's appeal as legal heir of Jitendra N. Mehta remained to be filed.</i></p> <p><i>It was only in 2021 when the appellant enquired about the appeal of the appellant not being listed for hearing for a long time and upon verifying the appeal papers again, the inadvertent mistake could be realised and rectified by filing this appeal belatedly.</i></p> <p><i>It is most humbly submitted that, there could be no malafide intention or deliberate delay in filing this appeal belatedly when Charuben J Mehta's appeal was filed within due time and the delay shall be considered to have been occurred due to reasonable and sufficient cause, which may kindly be condoned.</i></p> <p><i>Detailed explanation is provided in the appellant's application dated 11.02.2023 and Mr. Chitrak Parekh's affidavit dated 30.01 2023.</i></p>
<p><i>Delay covered under Covid Period</i></p>	<p><i>338 days (From 15.03.2020 to 15.02.2021)</i></p>	<p><i>Considering the hardships faced by everyone during the outbreak of Covid-19 pandemic, the Hon'ble Supreme Court, vide its order dated 10.01.2022 in MA No. 21/2021 in SMW(C) No. 3/2020 (copy attached herewith), has given a general</i></p>

		<p><i>exemption of the period from 15.03.2020 to 28.02.2022 and has held that the said period shall stand excluded for the purpose of limitation.</i></p> <p><i>In view of the same, it is most respectfully submitted that, the period covered under Covid period may be excluded in the computation of period of delay or in the alternative, may kindly be condoned considering the widely known difficulties of Covid-19 pandemic</i></p>
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13 The Ld. D.R. vehemently oppose and submitted that the delay should not be condoned.

14. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has filed the appeal in Charuben Jitendra Mehta for A.Y. 2009-10 within the statutory limit. But in case of Charuben Jitendra Mehta L/h. of Jitendra N. Mehta due to inadvertent mistake and miscommunication between the Chartered Accountant and his office personnel the appeal in Charuben Jitendra Mehta L/h. of Jitendra N. Mehta was not filed. It appears to be genuine reason hence, delay is condoned.

15. Such issue contested herein is identical to ITA No. 148/Ahd/2018 wherein in the Investigation Report the name of Charuben Jitendra Mehta L/h. of Jitendra N. Mehta has been given in respect of share Boker Mangal Keshav Securities Ltd. and the CCM to that extent. In the present case also the assessee could not establish that the assessee was not involved in CCM. The assessee in the return of income for A.Y. 2009-10 submitted current year losses at Rs. 2,15,501/-. Thus, the finding given hereinabove in ITA No.

ITA No. 148/Ahd/2018 &
ITA Nos. 12&13/Ahd/2021
Charuben Jitendrarai Mehta & Bimal Jitendra Mehta
& Charuben Jitendra Mehta vs. ITO
Asst.Year-2009-10

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148/Ahd/2018 is applicable in present case as well. Hence, ITA No. 13/Ahd/2021 is dismissed.

16. In result, all three appeals filed by the assesseees are dismissed.

This Order pronounced in Open Court on	22/03/2023
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 22/03/2023

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad