

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 40/KOL/ 2014
Assessment Year: 2010-2011**

Shri Jadu Prasad Jadob,.....Appellant
104A, A.P.C. Road,
Kolkata-700 009
[PAN: ACJPJ 2181 JJ]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-37, Kolkata,
18, Rabindra Sarani, 8th Floor,
Kolkata-700 001

Appearances by:

Shri Manish Bajoria, C.A. and Smt. Arati Debnath, C.A., for the assessee
Shri Rajat Kumar Kureel, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : January 02, 2017

Date of pronouncing the order : February 03, 2017

O R D E R

Per Shri P.M. Jagtap, A.M.:

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XXIV, Kolkata dated 01.11.2013 whereby he dismissed the appeal of the assessee *in limini* by treating the same as barred by limitation after declining to condone the delay on the part of the assessee in filing the same.

2. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the delay of 24 days on the part of the assessee in filing his appeal before the Id. CIT(Appeals) was sought to be condoned by filing a condonation petition, wherein the said delay was explained as follows:-

“That your petitioner had received the order of assessment and demand notice on 29.03.2013 and the same was duly

handed over to his accountant Sri Saha on 02.04.2013 to consult with advocate about the matter.

That Sri Saha after getting instruction from my advocate had somehow misplaced the said documents and I have never been informed about the said facts till 10.05.2013 after receiving a call from our Advocate Sri A.K. Ghosh.

That on same day myself with Sri Saha after searching all the documents at my office, had been able to locate the said copy of order and demand notice in a file and the same was handed over on the same day to my advocate for making out the necessary papers for filing an appeal and the said appeal papers has been handed over to me on 15.05.2013.

That the delay in filing of the said appeal arises out of misplacement of the related documents without which the appeal papers could not be made out and there was no deliberate or wilful neglect in this respect by the petitioner.

That your petitioner states that since the delay was beyond the control of the petitioner your petitioner earnestly prays before your Honour to condone the said unintentional delay and admit the appeal for hearing on merit so as to render justice”.

The Id. CIT(Appeals), however, declined to condone the delay on the part of the assessee in filing his appeal on the ground that no evidence was filed by the assessee to prove that the relevant documents were misplaced as stated in the condonation petition. We are unable to subscribe to this view taken by the Id. CIT(Appeals). As held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition -vs.- Mst. Katiji & Others [167 ITR 471 (SC)], “sufficient cause” for the purpose of condonation of delay should be interpreted with a view to do even-handed justice on merits in preference to approach which scuttles a decision on merits. Explaining further, Hon'ble Supreme Court has held that the power to condone delay is conferred with a view to enable the courts to do substantial justice to litigants by disposing of the cases on merits. If the facts of the present case as well as the reasons given by the assessee for the marginal delay of 24 days in filing his appeal before the Id. CIT(Appeals) are considered in the light of the spirit propounded by

the Hon'ble Supreme Court in the case of Mst. Katiji & Others (supra), we are of the view that the Id. CIT(Appeals) ought to have condoned the delay on the part of the assessee in filing his appeal in the interest of substantial justice and should have disposed of the said appeal of the assessee on merit. In that view of the matter, we set aside the impugned order of the Id. CIT(Appeals) and remit the matter back to him with a direction to condone the delay on the part of the assessee in filing his appeal and to dispose of the said appeal on merit.

3. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on February 03, 2017.

Sd/- (S.S. Viswanethra Ravi) Judicial Member	Sd/- (P.M. Jagtap) Accountant Member
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Kolkata, the 3rd day of February, 2017

- Copies to :
- (1) **Shri Jadu Prasad Jadob,**
104A, A.P.C. Road,
Kolkata-700 009
 - (2) **Assistant Commissioner of Income Tax,**
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18, Rabindra Sarani, 8th Floor,
Kolkata-700 001
 - (3) **Commissioner of Income Tax(Appeals-XXIV, Kolkata;**
 - (4) **Commissioner of Income Tax- ,**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.