

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'ए', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष

**Before Shri JOGINDER SINGH, Judicial Member, and
Shri G. MANJUNATHA, Accountant Member**

**ITA NO.3706/Mum/2016
Assessment Year: 2011-12**

Estate of Late Sunderlal C. Parikh, Vrindavan, 33, Hatkesh Society, 5 th N.S. Road, JVPD, Vile Parle (West), Mumbai-400056	बनाम/ Vs.	ACIT-CPC-Bangalore, Income Tax Officer-26(1)(4), Pratyakshakar Bhavan, C-10, BKC, Bandra, Mumbai-400050
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No.AAAAE1766G		

निर्धारिती की ओर से / Assessee by	Ms Neha Paranjape-AR
राजस्व की ओर से / Revenue by	Shri Rajesh Kumar Yadav-DR

सुनवाई की तारीख / Date of Hearing :	30/01/2018
घोषणा की तारीख/ Date of Pronouncement	30/01/2018

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 21/03/2016 of the First Appellate Authority, Mumbai, dismissing the appeal of the assessee and not condoning the delay, resulting into confirmation of the order of the AC-CPC, ignoring the factual matrix and not applying correct charge of tax applicable u/s 159 r.w.s 168 and further in not computing the tax in terms of section 168(1)(a) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, the ld. counsel for the assessee, Ms. Neha Paranjape, invited our attention to the factual matrix by explaining that the assessee is an estate of Late Sunderlal Parikh which was under distribution as on 31/03/2011. Being an estate the correct status of the assessee is 'AOP' however, since, there is only executor, the same is to be taxed at the rate of individual in terms of section 168(1)(a) of the Act. It was contended that the income of Rs.3,68,063/- was declared and the tax was

calculated at the rate applicable to an individual, as per section 159 r.w.s 168 of the Act, thus, the total tax liability of Rs.21,430/- was computed against which TDS credit of Rs.32694/- was claimed, resulting a refund of Rs.11,260/-.

It was explained that the return of income was processed by CPC Bangalore computing the tax liability at maximum marginal rate applicable to LLP ignoring the correct charge of tax applicable u/s 159 r.w.s. 168 of the Act. The Ld. counsel explained that the email order u/s 143(1) was received on 29/01/2012 and the appeal u/s 246(1)(a) was filed against the order on 30/08/2013 resulting into delay of 18 months. The Bench raised the query as to why the delay occurred in filing the appeal before the Ld. Commissioner of Income Tax (Appeal). The Ld. counsel explained that the e-mail received from CPC got mixed up other various mails and was diverted to 'SPAM mails' and thus skipped the notice of the recipient. It was contended that a lenient view may be taken and the delay is condoned, so that the matter may be heard on merit. The Ld. counsel empathetically contended that the prima-facie the assessee is having a good case. On the other hand, Shri Rajesh Kumar Yadav, Ld. DR, contended that it was a

negligence on the part of the assessee, therefore, delay may not be condoned. The Ld. DR relied upon the decision of the Tribunal in the case of Shri Kunal Surana vs Income Tax Officer (ITA No.3297/Mum/2012) order dated 19/04/2013.

2.1. We have considered the rival submissions and perused the material available on record. In view of the assertions made by the ld. respective counsel, so far as, condonation of delay is concerned, no doubt filing of an appeal is a right granted under the statute to the assessee and is not an automatic privilege, therefore, the assessee is expected to be vigilant in adhering to the manner and mode in which the appeal is to be filed in terms of the relevant provisions of the Act. Nevertheless, a liberal approach has to be adopted by the appellate authorities, where delay has occurred for bona fide reasons on the part of the assessee or the Revenue in filing the appeal. In matters concerning the filing of appeal, in exercise of the statutory right, a refusal to condoned the delay can result in a meritorious matter being thrown out at the threshold, which may lead to miscarriage of justice. The judiciary is respected not on

account of its power to legalize in justice on technical grounds but because it is capable of removing injustice and is expected to do so.

2.2. The Hon'ble Apex Court in a celebrated decision in Collector, Land Acquisition vs Mst. Katiji & Ors. 167 ITR 471 opined that when technical consideration and substantial justice are pitted against each other, the courts are expected to further the cause of substantial justice. This is for the reason that an opposing party, in a dispute, cannot have a vested right in injustice being done because of a non- deliberate delay. Therefore, it follows that while considering matters relating to the condonation of delay, judicious and liberal approach is to be adopted. If sufficient cause is found to exist, which is bona-fide one, and not due to negligence of the assessee, the delay needs to be condoned in such cases. The expression 'sufficient cause' is adequately elastic to enable the courts to apply law in a meaningful manner, which sub-serves the end of justice- that being the life purpose of the existence of the institution of the courts. When substantial justice and technical consideration are pitted against each other, the

cause of substantial justice deserves to be preferred. The Hon'ble Apex Court in Vedabhai vs Santaram 253 ITR 798(SC) observed that inordinate delay calls for cautious approach. This means that there should be no mala-fide or dilatory tactics. Sufficient cause should receive liberal construction to advance substantial justice. The Hon'ble Apex Court in 167 ITR 471 observed as under:-

"3. The legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the others courts in the hierarchy."

2.3. Furthermore, the Hon'ble Supreme Court in the case of Vedabai Alia Vaijayanatabai Baburao Patil vs. Shantaram Baburao Patil 253 ITR 798 (SC) held that the court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression

‘sufficient cause’, the principle of advancing substantial justice is of prime importance. The court held that the expression “sufficient cause” should receive liberal construction.

2.4. The decision of the Tribunal in People Infocom Private Ltd. v/s CIT (ITA No.210/Mum/2013) order dated 19/05/2016, M/s Neutron Services Centre Pvt. Ltd vs ITO (ITA No.1180/Mum/2012) order dated 18/02/2016, Shri Saidatta Coop-. Credit Society Ltd. v/s ITO (ITA No.2379/Mum/2015) order dated 15/01/2016 and Mr. Nikunj Barot (Prop. Enigma) vs ITO (ITA No.4887/Mum/2015) order dated 06/01/2016, wherein, substantial delay was condoned, supports the case of the present assessee.

Having made the aforesaid observation and various decisions discussed hereinabove, including from Hon’ble Apex Court, the circumstances narrated by the assessee, wherein, he has stated the reasons which caused the delay, therefore, we are satisfied with the explanation of the assessee and condone the delay and direct the First Appellate Authority to adjudicate the appeal of the assessee

afresh on merit and decide in accordance with law. The assessee be given opportunity of being heard to substantiate the claim.

Finally, the appeal of the assessee is allowed for statistical purposes only.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 30/01/2018.

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : **30/01/2018**

Shekhar, P.S./नि.स.,

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai