

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ई, मुंबई ।**

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

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री एन. के. प्रधान, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and  
Shri N.K. Pradhan, Accountant Member**

**ITA NO.1083/Mum/2017  
Assessment Year: 2009-10**

Shri Pravin Dolas, Bldg. No.T/28, 2 <sup>nd</sup> Floor, Room No.202,Pratikshanagar, Sion Koliwada, Mumbai-400022	<b>बनाम/</b> Vs.	Income Tax Officer, Ward-15(1)(3), Mumbai
(निर्धारिती /Assessee)		(राजस्व /Revenue)
<b>P.A. No. AICPD6505H</b>		

निर्धारिती की ओर से / Assessee by	Shri Fenil Bhatt
राजस्व की ओर से / Revenue by	Shri V. Justin-DR

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>28/05/2018</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>28/05/2018</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 16/03/2015 of the Ld. First Appellate Authority, Mumbai, in

not condoning the delay of 437 days in filing the appeal before the First Appellate Authority and ignoring the reasons of delay explained in the affidavit filed before the Ld. Commissioner of Income Tax (Appeal).

2. During hearing, the ld. Counsel for the assessee, Shri Fenil Bhatt, contended that the assessee belongs to economically weaker section and in the absence of legal assistance could not appear before the Ld. Assessing Officer and even the appeal was filed late. It was pleaded that assessee is in a position to substantiate its case if one more opportunity is provided to the assessee. On the other hand, Shri V. Justin, contended that in spite of sufficient opportunity provided to the assessee, the assessee chose not to appear before the Ld. Assessing Officer and thus the assessment was framed u/s 144 of the Act. It was pleaded that delay was rightly not condoned by the Ld. Commissioner of Income Tax (Appeal).

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 appeals are 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 appeals. In matters concerning the filing of appeals, in exercise of the statutory right, a refusal to condone 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 observed that inordinate delay calls for cautious approach. This means that there should be no malafide 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 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, the delay is condoned. Since, we have condoned the delay, the Ld. Commissioner of Income Tax (Appeal) is directed to adjudicate the appeal of the assessee on merit. The assessee be given opportunity to substantiate its claim with documentary evidence, if any. However, we find that the assessee was served upon various notices by the Ld. Assessing Officer and still the assessee did not appear resulting into passing an ex-parte order u/s 144 of the Act. Thus, the assessee is directed to remain more vigilant in future and to attend the proceedings. The Ld. Commissioner of Income Tax (Appeal) is thus, to

adjudicate the appeal of the assessee on merit afresh in accordance with law. The appeal of the assessee is allowed for statistical purposes.

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

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 28/05/2018.

*Sd/-*

(N.K. Pradhan)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28/05/2018

*Shekhar. P.S/निजी सचिव*

*Sd/-*

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

**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,