

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

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'H' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA Nos.5486 & 5487/Mum/2016
Assessment Year: 2011-12**

Kamlesh Steel, 23/24 Bldg. No.3, Mittal Estate, Andheri Kurla Road, Andhri (E), Mumbai-400059	JCIT, Range-20(1), Mumbai
(निर्धारिती /Assessee)	(राजस्व /Revenue)
PAN. No. AAAPK6762D	

निर्धारिती की ओर से / Assessee by	Shri Prasad V. Paranjape
राजस्व की ओर से / Revenue by	Shri Rajat Mittal-DR

सुनवाई की तारीख / Date of Hearing:	18/06/2018
आदेश की तारीख / Date of Order:	18/06/2018

आदेश / O R D E R

Per Joginder Singh(Judicial Member)

These two appeals are by the assessee against the impugned orders both dated 28/06/2016 of the Ld. First Appellate Authority, Mumbai. The assessee has challenged both quantum as well as penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, the ld. counsel for the assessee, Shri Prasad V. Paranjape, contended that the First Appellate Authority did not condone the delay and was expected to adjudicate the appeals on merit and thus sufficient opportunity, to explain the delay as well as the factual matrix, was not provided to the assessee, which is violation of principle of natural justice. On the other hand, the Ld. DR, Shri Rajat Mittal, contended that there was a delay of 255 days, therefore, the Ld. Commissioner of Income Tax (Appeal) rightly disposed off the appeals.

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 subserves 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 Vaijyanatabai 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, in all fairness, we deem it appropriate to remand both these appeals to the file of the Ld. Commissioner of Income Tax (Appeal) to adjudicate the same on merit. The assessee is at liberty to furnish necessary evidence, if any, in support of its claim. The assessee be given opportunity of being heard. Thus, both the appeals are allowed for statistical purposes.

Finally, the appeals of the assessee are allowed for statistical purposes only.

This Order was pronounced in the open court in the presence of Ld. representative from both sides at the conclusion of hearing on 18/06/2018.

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : **18/06/2018**

Shekhar, P.S.नि.स.

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

1. अपीलार्थी / The Appellant (Respective assessee)
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