

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

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'J' 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 No.2322/Mum/2017
Assessment Year: 2009-10**

M/s. Springbird Educations Pvt. Ltd. 401, Centre Point Co-op. Society Ltd. Jn. Of S.V. Road & Juhu Tara Road, Santacruz (West), Mumbai-400054	<u>बनाम/</u> Vs.	Income Tax Officer-4(3)(4), 6 th Floor, R. No.637, Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No. AAJCS8990B		

निर्धारिती की ओर से / Assessee by	Shri Satish R. Mody
राजस्व की ओर से / Revenue by	Shri A. Mohan- DR

सुनवाई की तारीख / Date of Hearing:	20/08/2018
आदेश की तारीख / Date of Order:	24/09/2018

आदेश / O R D E R

Per Joginder Singh(Judicial Member)

The assessee is aggrieved by the impugned order dated 09/12/2016 of the Ld. First Appellate Authority, Mumbai, dismissing the appeal on the ground that the appeal was not filed within time without considering the facts and circumstances of the case and, thus, not admitting the appeal filed against the order us. 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, the learned counsel for the assessee Shri Satish R Modi explained that the penalty order was passed by the learned Assessing Officer on 25.03.2014, which was not received by the assessee thus, no appeal could be filed. On 20.08.2014, the assessee received demand notice from the Assessing Officer and at that time the assessee realized and asked the learned Assessing Officer to supply the copy of the order, which was received on 11.09.2014. The learned counsel invited our attention to page 2 of the paper-book and appeal was filed on 29.09.2014. Our attention was invited to pages 6, 7 and 10 of the paper-book. It was explained that all these proceedings caused

delay of five months in filing appeal before the learned CIT(A), which was due to bona fide reasons, therefore, it was prayed that the delay may be condoned and the appeal may be decided on merit. Shri A Mohan, learned DR contended that the delay may be condoned and the assessee may be directed to explain the delay.

3. We have considered the rival submissions and perused the material available on record. Admittedly, the assessment order was passed by the learned Assessing Officer on 12.12.2011, making certain additions and the penalty order under section 271(1)(c) r.w.s 274 is dated 25.03.2014, which was claimed to be not received by the assessee and on 20.08.2014, when the assessee received the demand notice at that time the assessee applied for supply of copy of the order and that copy was received on 11.09.2014. The assessee wrote a letter dated 20.08.2014 (page 2 of the paper-book), requesting the learned Assessing Officer informing that the notice under section 271(1)(c) was not received. The assessee received the copy of the order on 11.09.2014 and thus, appeal filed on 29.09.2014. The notice of demand under section 156 of the Act is available at page 6 of the paper-

book, which was received on 11.09.2014. The totality of facts clearly indicates that the delay caused in filing the appeal is due to bona fide reasons, which has been clearly established by the assessee. 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 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.

3.1. 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 a 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.”

3.2. 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.

3.3. 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, it has stated the reasons which caused the delay, therefore, the delay is condoned.

4. Since, the delay has been condoned, we remand this appeal to the file of the learned first appellate authority to adjudicate the appeal of the assessee on merit in accordance with law. The assessee be given opportunity of hearing with further liberty to furnish necessary evidence, if any, in support of its claim. Thus, the appeal of the assessee is allowed for statistical purposes only.

5. 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 hearing on 20/08/2018.

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24/09/2018

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