

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (A), KOLKATA  
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]**

**I.T.A. Nos. 2210 - 2212/Kol/2017  
Assessment Year: 2005-06**

**Swarnaprova Dutta.....Appellant**  
**L/H: Sri Ujjal Dutta**  
**Netaji Road, Bolpur,**  
**Birbhum - 731 204.**  
**[PAN: AIIPD 0957 H]**

**ITO, Ward 3(1)Suri.....Respondent**  
**Aayakar Bhawan, Suri,**  
**Birbhum - 731 101.**

**Appearances by:**

*Shri Miraj D Shah, FCA appearing on behalf of the Assessee.*

*Shri C.J. Singh, Addl. CIT, Sr. DR appearing on behalf of the Revenue.*

Date of concluding the hearing : January 07, 2019

Date of pronouncing the order : February 28, 2019

**ORDER**

**Per P.M. Jagtap, Vice President**

These three appeals filed by the assessee involving one assessment year i.e. 2005-06 are directed against three separate orders passed by the Ld. CIT(A), Burdwan and since issues involved therein are common and interlinked, the same have been heard together and are being disposed of by a single consolidated order for the sake of convenience.

2. At the outset, it is noted that there is a delay of 345 days on the part of the assessee in filing these appeals before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay on the following grounds:

*"1. During the financial year 2004-05 relevant to assessment year 2005-06, Mr. Netai Dhar was in charge of our accounts and looking after*

*income tax matters dealing with clerical and day to day work of my business. Mr. Dhar had left from my concern without handover all documents connected and concerned income tax appeal order which he kept in a locked drawer and did not handover the key. Prior to Biswakarma Puja each and every year the yearly cleaning and renovation work of our shop held like all other years in this year 2017 also. Often I contracted him over telephone but he did not respond. Having no other alternative I compelled to broken the lock and recogered relevant appeal order and other documents.*

*2. The appellant could not file appeal before Income Tax Appellant Tribunal owing to the reason stated above, which obstructs me to file appeal in time which is beyond my control.”*

3. Keeping in view the reasons given by the assessee as above, we are satisfied that there was a sufficient cause for the delay of 345 days on the part of the assessee in filing these appeals before the Tribunal. Even the learned DR has not raised any objection in this regard. Accordingly, the said delay is condoned and these appeals of the assessee are being disposed of on merit.

4. The assessee in the present case is an individual who was deriving income from the business of kantha stitching besides income from interest. The return of income for the year under consideration i.e. A.Y. 2005-06 was filed by him on 02.01.2006 declaring a total income of Rs. 1,06,950/-. In the assessment completed u/s 147/143(3) vide an order dated 16.12.2009, the total income of the assessee was determined by the AO at Rs. 12,51,537/- after making an addition of Rs. 11,40,061/- to the total income of the assessee on account of deposits found to be made in the bank account of the assessee with Axis Bank, Bolpur by treating the same as unexplained.

5. Against the order passed by the AO u/s 147/143(3), an appeal was preferred by the assessee before the Ld. CIT(A). There was however a delay of 7 months and 13 days in filing the said appeal before the Ld. CIT(A) and since the explanation offered by the assessee for the said delay was not found satisfactory by the Ld. CIT(A), he dismissed the appeal of the assessee in limine by treating the same as barred by limitation vide his appellate order dated 29.06.2016.

6. In respect of the addition of Rs. 11,14,061/- made to the total income of the assessee, penalty proceedings u/s 271(1)(c) were also initiated by the AO and since no explanation was offered by the assessee in response to the show cause notice issued by him during the course of the said proceedings, the AO proceeded to impose a penalty of Rs. 3,80,574/- u/s 271(1)(c) of the Act vide his order dated 29.06.2010. The penalty imposed by the AO u/s 271(1)(c) was challenged by the assessee before the Ld. CIT(A). There was however a delay of 15 days on the part of the assessee in filing the said appeal before the Ld. CIT(A) and since there was no application filed by the assessee seeking condonation of the said delay, the Ld. CIT(A) dismissed the appeal of the assessee in limine by treating the same as barred by limitation.

7. After passing the order u/s 147/143(3) of the Act vide order dated 16.12.2009, the Assessing Officer found that the interest charged therein has been wrongly calculated. He, therefore, passed an

order u/s 154 on 01.08.2012 rectifying the said mistake. Against the order passed by the AO u/s 154, an appeal was preferred by the assessee before the Ld. CIT(A) contending that proper and sufficient opportunity was not afforded by the AO before passing the order of rectification u/s 154. The Ld. CIT(A) did not find merit in this contention raised by the assessee and dismissed the appeal of the assessee filed against the order of the rectification u/s 154. Aggrieved by the orders of the Ld. CIT(A), the assessee has preferred these appeals before the Tribunal.

8. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the appeals against the orders passed by the AO u/s 147/143(3) and 271(1)(c) were filed by the assessee before the Ld. CIT(A) on 31.01.2010 with the delay of 7 months and 13 days and 15 days respectively. As regards the delay of 7 months and 13 days in filing the appeal against the order of the AO u/s 147/143(3), an application seeking condonation of the said delay was filed by the assessee stating that he was ill for a prolonged period due to sudden demise of his mother which made him confused and hopeless. This reason given by the assessee was duly supported by a medical certificate indicating that the assessee was disturbed by the death of his mother which had caused distress. The Ld. CIT(A) however did not accept this reason given by the assessee as sufficient cause and dismissed the appeal of the assessee in limine by treating the same as barred by limitation. We are unable to subscribe this view taken by the Ld. CIT(A). It is well settled that the term "sufficient causes" is to be construed liberally in

order to advance the cause of substantial justice and not strictly to defeat the purpose. When the reason of prolonged illness given by the assessee for the delay of 7 months and 13 days in filing his appeal before the Ld. CIT(A) was duly supported by medical certificate indicating the disturbance caused to the assessee by the death of his mother as well as his distress, we are of the view that it constituted a sufficient cause and the Ld. CIT(A) ought to have condoned the said delay and disposed of the appeal of the assessee on merit. In that view of the matter, we set aside the impugned order of the Ld. CIT(A) dated 29.06.2016 and remit the matter back to him for disposing of the appeal of the assessee against the order passed by the AO u/s 147/143(3) on merit after giving the assessee proper and sufficient opportunity of being heard.

9. As regards the appeal filed by the assessee against the order passed by the AO u/s 271(1)(c) before the Ld. CIT(A) with the delay of 15 days, we find merit in the contention of the learned counsel for the assessee that the reasons given by the assessee for delay in filing the appeal against the order of the AO u/s 147/143(3) was equally applicable to this appeal also which was filed on the same date i.e. 31.01.2010. As already held by us, the said reason constituted a sufficient cause for the delay on the part of the assessee in filing the appeal against the order of the AO u/s 147/143(3). It therefore follows that there was a sufficient cause for the delay of 15 days on the part of the assessee in filing the appeal before the Ld. CIT(A) against the order passed by the AO u/s 271(1)(c) and the Ld. CIT(A) ought to have condoned the said delay. We accordingly set aside the

impugned order passed by the Ld. CIT(A) dated 29.06.2016 and remit the matter back to him for disposing of the appeal of the assessee against the order of the AO passed u/s 271(1)(c) afresh on merit after giving proper and sufficient opportunity of being to the assessee.

10. As regards the appeal of the assessee filed against the rectification order of the AO u/s 154, we find that the issue involved therein relating to charging of interest is consequential to the issue involved in the appeal of the assessee filed against the order of the AO u/s 147/143(3). Moreover, the main grievance of the assessee on this issue is that no proper and sufficient opportunity was given to him either by the AO or by the Ld. CIT(A) before making the rectification on the issue of interest. We, therefore, set aside the impugned order passed by the Ld. CIT(A) on 21.06.2016 and remit the matter back to him for disposing of the appeal of the assessee afresh after giving proper and sufficient opportunity of being heard.

**11. In the result, all the three appeals of the assessee are treated as allowed for statistical purpose.**

Order Pronounced in the Open Court on 28<sup>th</sup> February, 2019.

Sd/-  
(A. T. Varkey)  
JUDICIAL MEMBER

Sd/-  
(P.M. Jagtap)  
VICE PRESIDENT

**Dated: 28/02/2019**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Swarnaprova Dutta, L/H: Sri Ujjal Dutta, Netaji Road, Bolpur, Birbhum – 731 204.
2. ITO, Ward 3(1), Aayakar Bhawan, Suri, Birbhum – 731 101.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.

ITAT, Kolkata