

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**BENCH “C” for ITA Nos.1883/Ahd/2018 & 1884/Ahd/2008 and**  
**‘SMC’ BENCH for ITA No.2136/Ahd/2018, AHMEDABD**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT And**  
**SHRI RAJPAL YADAV, JUDICIAL MEMBER**

Sl. Nos.	ITA No(s)	Assessment Year (s)	Appeal(s) by	
			Appellant vs.	Respondent
1.	1883/Ahd/2018	2010-11	Ketan M.Chalishazar 4, Vasupujya Society Pt College Road Paldi Ahmedabad-380 007 PAN:ACDPC5209 N	The ITO Ward-5(3)(1) Ahmedabad
2.	1884/Ahd/2018	201-11	Ketan M. Chalishazar HUF (Address as above) PAN:AADHK3422M	The ITO Ward-5(3)(1) Ahmedabad
3.	2136/Ahd/2018	2010-11	Mahendra J Chalishazar HUF (Address as above) PAN:AADHM9205L	The ITO Ward-5(3)(1) Ahmedabad

<b>Assessee(s) by :</b>	Shri Parin Shah, AR
<b>Revenue by :</b>	Shri L.P. Jain, Sr.DR

सुनवाई की तारीख / <b>Date of Hearing</b>	07/06/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	10/06/2019

**आदेश / ORDER**

**PER SHRI RAJPAL YADAV, JUDICIAL MEMBER :**

The Id. first appellate authority has decided the appeals of Shri Ketan M. Chalishazar and Shri Ketan M. Chalishazar HUF vide orders dated 03/08/2018 passed in AY 2010-11, whereas appeal of Shri Mahendra J. Chalishazar HUF was decided on 06/09/2018. Since

common issues are involved, therefore we dispose of all these appeals by this common order.

2. The assesseees have filed an application for hearing all these appeals out of turn on the ground that their appeals were time barred before the Id.first appellate authority by 12 & 13 days. The Ld.CIT(A) has not condoned the delay and dismissed the appeals being time barred.

3. Considering the above facts, we have taken up these appeals for out of turn hearing.

4. The Ld.DR did not raise any objection for taking the appeals for hearing itself.

5. As observed earlier, these appeals were time barred before the Id. first appellate authority by 12 days (ITA Nos.1883 and 1884/Ahd/2018) and 13 days (ITA No.2136/Ahd/2018). In order to explain the delay, all appellants have contended that as per Rule 45(2) of the IT Rules, 1962, appeal before the CIT(A) requires to be filed electronically and in order to file it electronically it is to be verified by Aadhar OTP or through digital signature. Both the above modes required OTP for verification on mobile number registered with UIDAI (Authority Maintaining Aadhar Database) The assesseees have made application for updation of mobile number in Aadhar data base on 03/02/2018. The assesseees have

attached relevant proof in this regard as Exhibit-I with these appeals also. The UIDAI took 12 days to update the same and thereafter appeals were filed before the Ld.CIT(A). For explaining the delay, assessee took above plea before the Ld.first appellate authority but Id.CIT(A) did not accept this contention of the assessee and rejected the application for condonation of delay though the orders of Id.CIT(A) are separate but basically verbatim same except variations of figures.

6. We have duly considered rival contentions and gone through the record carefully. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression “sufficient cause” employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the Id.Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon’ble High Court as well as before the Hon’ble Supreme Court, then, Hon’ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon’ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

- “1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”
7. Similarly, we would like to make reference to authoritative pronouncement of Hon’ble Supreme Court in the case of N.Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

*“Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public*

*policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

*A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the condonation of delay, then such reasons are to be construed with a justice oriented approach.

8. In the light of the above, if we examine the explanation of assessee, then it would reveal that a small delay of 13 days occurred in

the case of Mahendra J. Chalishazar HUF and 12 days in rest of the two appeals. This delay has occurred on account of certain procedural aspect. The assesseees have explained their bonafide. They have not made their appeals time barred by adopting tactics as a strategy to fight litigation with the department. In other words, there is no malafide intention at the ends of assesseees not to file appeal well in time. The ld.first appellate authority ought to have taken a sympathetic view while considering the application for condonation of delay.

9. On due consideration of above facts, we are of the view that assesseees were prevented by sufficient reasons for not pressing their appeals before the ld.CIT(A) within the time limit. Therefore, we condone the delay in filing appeal(s) before the Ld.CIT(A). We set aside the impugned orders of the ld.first appellate authority and restore all these appeals to the file of ld.CIT(A) for fresh adjudication on merit.

10. In the result, all the three appeals of the assessee(s) are allowed for statistical purposes.

**Order pronounced in the Court on 10th June-2019 at Ahmedabad.**

Sd/-  
( PRAMOD KUMAR )  
VICE PRESIDENT

Sd/-  
( RAJPAL YADAV )  
JUDICIAL MEMBER

Ahmedabad; Dated 10/06/2019  
टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad