

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD KUMAR,
HON'BLE VICE-PRESIDENT
AND
SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER

ITA.No.2364/Ahd/2018
निर्धारण वर्ष/Asstt.Year : 2010-11

Arti Hiren Shah 2, P&T Society B/s.Kashi Vishwanath Mahadev Nr.Crossing, Maninagar East Ahmedabad 80008.	Vs	ITO, Ward-6(1)(4) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Hiren J. Shah
Revenue by :	Shri Vinod Tanwani, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15/07/2019
घोषणा की तारीख /Date of Pronouncement: 26/07/2019

आदेश/O R D E R
PER RAJPAL YADAV, JUDICIAL MEMBER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-6, Ahmedabad dated 18.10.2018.

2. In the first ground of appeal, the assessee has pleaded that her appeal was dismissed by the Id.CIT(A) on account of limitation.

3. With the assistance of the Id.representatives, we have gone through the record carefully. Appeal of the assessee was barred by 76 days limitation before the Id.CIT(A). The Id.CIT(A) has dismissed the appeal of the assessee

on the ground that she has not filed specific application for condonation of delay, rather simply pleaded in the statement of facts.

4. We find that sub-section 5 of Section 253 of the Act 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.”*

5. 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 Jain 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 loser 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.

6. In the light of the above and a perusal of the record would suggest that *ex parte* order was passed against the assessee under section 144/147 of the Income Tax Act. The assessee has pleaded before the Id.CIT(A) there was a change of address and the AO has not issued notice on the changed address. Similarly, defect in the appeal was not communicated to the assessee by the Id.CIT(A) also. Her appeal was dismissed *ex parte*. Taking into

consideration all the above facts, and in the interest of justice, we condone the delay in filing appeal before the Id.CIT(A) and restore all the issues to the file of the Id.CIT(A) for fresh adjudication on merit. The assessee will be at liberty to submit details in support of her explanation. It needless to say, the observations made by us will not impair or injure the case of the AO and will not cause any prejudice to the defence/explanation of the assessee.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 26th July, 2019 at Ahmedabad.

Sd/-
(PRAMOD KUMAR)
VICE-PRESIDENT

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER