

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 1651/Ahd/2018
(निर्धारण वर्ष/Assessment Year : 2012-13)**

Aadil Abdulsattar Memon 10 th Floor, President House Opp. C N Vidyalya Ellisbrdige Ahmedabad	बनाम/ Vs.	The DCIT CPC Bangalore
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AELPM 9370 E		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Biren Shah, AR
प्रत्यर्थी की ओर से/ Respondent by:	Shri Vidhyut Trivedi, Sr.DR

सुनवाई की तारीख/ Date of Hearing	29/01/2020
घोषणा की तारीख / Date of Pronouncement	30/01/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-6, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-6/226/17-18 dated 01/05/2018 arising in the order passed by the DCIT, CPC, Bangalore under s.143(1) of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 12.5.2013 relevant to Assessment Year (AY) 2012-13.

2. The assessee has raised the following grounds of appeal:-

1. *In Law and on the facts and in the circumstances of the Appellant's case, the Ld.CIT(A) has erred in dismissing the application for condonation of*



delay and thereby dismissing the appeal of the Appellant, without appreciating facts and law of the case properly.

2. *In law and on the facts and in the circumstances of the Appellant's case, the Ld.CIT(A) has further erred in not adjudicating grounds of appeal raised by the appellant on merits, without appreciating facts and law of the case properly.*
3. *The appellant craves leave to add, delete, alter or amend any of the ground/s on or during the appellate proceedings.*

2. At the outset, the learned AR before us submitted that there was delay in filing the appeal before the learned CIT (A) about 4 years and 2 months which was not condoned by him. Therefore, the learned CIT (A) dismissed the appeal of the assessee on account of delay in filing the same and without adjudicating on merit vide order dated 01-05-2018.

3. The learned AR further submitted that the primary reason for not filing the appeal before the learned CIT (A) was that the intimation under section 143(1) issued by CPC Bangalore was received by the assessee dated 22-01-2018. However, the Id. CIT(A) alleged that such intimation under section 143(1) was issued by CPC Bangalore dated 12-5-2013 which might have received by the assessee within months i.e. 12-11-2013 but the appeal was filed after the inordinate delay dated 21-2-2018. Hence, the appeal filed by the assessee was dismissed by the Id. CIT-A. However, the Id. AR before us has filed the notarized affidavit to the effect that the intimation was received by the assessee on making the request on line to CPC Bangalore dated 19-01-2018. The Id. AR also declared that he has not received any intimation in past. The copy of the affidavit is available on record.

3.1 In view of the above, the learned AR for the assessee claimed that the delay in filing the appeal was unavoidable and beyond the control of the



assessee. Therefore, he prayed before us to direct the learned CIT (A) to condone the delay and adjudicate the issue raised before him on merit.

4. On the other hand, the learned DR before us submitted that there is inordinate delay in filing the appeal before the learned CIT (A). Accordingly, he opposed to condone the delay in filing the appeal.

5. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion we find that the controversy arises for our adjudication whether there exist reasonable and sufficient cause for condoning the delay in filing the appeal before the learned CIT (A) in the aforesaid facts and circumstances. There is no hard and fast rule which can be laid down for condoning the delay in filing the appeal. As such the discretion for condoning the delay can be exercised depending upon 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. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.

6. We also note that the case on merit appears to be in favour of the assessee. But there is a technical defect in the appeal since the appeal was not filed within the period of limitation for the reason as described above. There was the affidavit filed by the assessee explaining the reasons for the delay in filing the appeal before us. However, the Revenue has not filed any counter-affidavit to deny the submission made by the assessee.

6.1. It is also important to note that Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down



certain principles for considering the condonation petition for filing the appeal which are reproduced hereunder:

(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 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, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the 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 the 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.

6.2. From the above judgment of the Hon'ble Apex Court, we note that the substantial justice deserves to be preferred rather than deciding the matter on the basis of technical defect.

6.3. We also note that there is no allegation from the Revenue that the appeal was not filed within the time by the assessee deliberately. Therefore, we are inclined to prefer substantial justice rather than technicality in deciding the issue.



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6.4. However, we are not oblivion to the fact that the provisions of section 250(6) of the Income Tax Act, 1961 casts obligation upon the Ld. CIT(A) to pass a reasoned order after giving a proper opportunity of hearing to the assessee. But the negligent/dilly-dally approach of the assessee in filing the appeal before the Ld.CIT(A) cannot be neglected/ignored. Therefore, we are inclined to levy a cost of Rs. 5,000/- upon the assessee for adopting the negligent approach in filing the appeal before the Ld.CIT(A). Accordingly, we direct the assessee to deposit a sum of Rs. 5,000/- to the Income Tax Department prior to the commencement of hearing before the Ld. CIT(A).

6.5. In view of the above and after considering the facts in totality, we direct the learned CIT (A) to admit the appeal of the assessee and adjudicate the issue raised by him on merit. Hence the ground of appeal of the assessee is allowed for statistical purposes.

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

This Order pronounced in Open Court on	30/01/2020
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Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 30/01/2020

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS



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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)-6, Ahmedabad
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**