

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री सी.एम.गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष

**BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM**

**आयकर अपील सं./ITA No.233/CTK/2019**

(निर्धारण वर्ष / Assessment Year : 2011 - 2012)

Tarunshree Cotton (P) Ltd., Kasturi Nagar, Rayagada, Orissa-765001	Vs.	DCIT Berhampur Circle, City/Dist-Berhampur
स्थायी लेखा सं./PAN No. : <b>AABCT 9558 J</b>		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri P.K.Mishra, Advocate
राजस्व की ओर से / Revenue by	:	Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing	:	26/02/2020
घोषणा की तारीख / Date of Pronouncement	:	16/03/2020

**आदेश / ORDER**

**Per L.P.Sahu, AM :**

This is an appeal filed by the assessee against order of CIT(A)-1, Bhubaneswar, dated 12.08.2016 for the assessment year 2011-2012.

2. As per the office note/order sheet entry, the appeal of the assessee is barred by 357 days. In this regard, the ld. AR of the assessee has filed an application for condonation of delay along with an affidavit.

The contents of the application are as under :-

*"1. That, in the case of the above named Appellant Company, original order has not yet been served on the Appellant Company. However, after receipt of the instruction from recovery officer and Assessing Officer, the Assessee Company has applied for certified copy of the order sheet. Certified copy of the Appeal order was served on the Managing Director of the Appellant Company on 18.07.2018. After receipt of the order, the Managing Director has handed over it to its Authorised representative and requested him to take necessary action. The order was received by the Appellant Company on 18.07.2018 and the Appeal is to be filed by*

*16<sup>th</sup> of September 2019, but by that time, due to seizer of the business unit by Bank Authorities and due to Auction notice issued by bank, the Managing Director was socked and suffered from severe neurological disease, as such, he being busy in medical treatment could not come to the office of the Counsel to deposit Appeal Fees and to take necessary steps to file the Appeal in time.*

*That, after getting partial relief from medical, when the Managing Director contacted his counsel on 08.07.2019, came to know that, the Appeal in the case of the above named Appellant Company has not been filed because of lack of instruction. Therefore, having no other alternative and without making further delay, he came to Cuttack on 09.07.2019 evening and requested the present counsel to prepare the present Appeal, accordingly the present Appeal is prepared and is filed today i.e. on 10.07.2019. The Appellant Company submits here with Affidavit, medical documents and possession letters issued by Bank Authorities for reference and record of this Hon'ble Tribunal.*

*That, it may be respectfully submitted here that, there is no fault in tfe hand of the Assessee/Appellant Company. Since, the Bank Authorities issued attachment notice and possession notice, Directors of the Appellant Company moved here and there in search of fund to save their business. The Managing Director got severely socked and suffered from severe neurological disease, being busy in medical treatment of Managing Director and in search of fund, the Appellant Company could not file the Appeal and the situation was beyond control of it. That apart, there are sufficient cause for which, the present Appeal could not be filed in time, therefore the Appellant Company prays before your Honour to be kind enough to condone delay of 357 days in filing of appeal before this Hon'ble Tribunal and the appeal may be heard on merit. If the delay is hot condoned and the appeal is not heard on merit, then the Appellant Company will be put to irreparable loss and injury. Hence the;*

PRAYER

*Under the above mentioned facts and in the circumstances of the case, it is most respectfully submitted here that, your Honour shall be graciously pleased to consider the above mentioned difficulties faced by the Appellant Company for filing of appeal before this Hon'ble Tribunal and be further pleased to condone delay of 357 days in*

*filing of appeal and further be pleased to admit the appeal and the appeal may be heard on merit in the interest of justice.*

*And for this act of kindness, the Appellant Company as in duty bound shall ever pray."*

3. On the other hand, ld. DR strongly objected to condone the delay.

We have also gone through the said application along with the affidavit

filed by the assessee explaining the sufficient reasons for delay. The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST Katji & Others (167 ITR 471) observed that:

*"The legislature has conferred the power to condone delay by enacting sec 5 of limitation Act in order to enable the courts to do substantial justice to parties disposing of matter on "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 sub serves the ends of justice that being the life purpose of the existence of the institution of court. It is common knowledge that this court has been making justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:*

- (i) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
- (ii) 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.*
- (iii) "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 and pragmatic manner.*
- (iv) When substantial justice and technical considerations 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.*
- (v) 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.*
- (vi) 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."*

4. The Hon'ble Apex Court further in the case of N. Bal Krishnan v/s.

M. Krishnamurthy - [(1998) 7 SCC 123] observed that:

*"The primary function of a court is to adjudicate the dispute between the parties & to advance substantial justice. The time limit fixed for*

*approaching the court in different situations is not because on the expiry of such time a bad cause would transform in to a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seen their remedy promptly. Law of limitation is thus founded on public policy. It is enshrined in the maxim "interest republic up sit finis lithium" (it is for general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. There is no presumption that delay in approaching the court is always deliberate. In every case of delay, there can be some lapse on the party 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 per of a dilatory strategy, the court must show utmost consideration to the suitor."*

*6. In the case of [Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi](#) AIR 1979 SC 1666, the Supreme Court has held that a legal advice tendered by a professional and the litigant acting upon it one way or the other could be a sufficient cause to seek condonation of delay and coupled with the other circumstances and factors for applying liberal principles and then said delay can be condoned. Eventually, an overall view in the larger interest of justice has to be taken. None should be deprived of adjudication on merits unless the Court of law or the Tribunal/Appellate Authority finds that the litigant has deliberately and intentionally delayed filing of the appeal that he is careless, negligent and his conduct is lacking in bona fides.*

5. Considering the application along with the affidavit of the assessee for condonation of delay and respectfully following the above decisions of Hon'ble Supreme Court, we condone the delay in filing the appeal and the appeal is heard finally.

6. Ld. AR, at the outset, submitted that Sri Chava Sivarama Krishna, the Managing Director of the assessee company was busy in settlement of the loan amount taken from Andhra Bank on behalf of the company due to which he could not cooperate in the assessment proceedings. It was also contended that father of Sri Chava Sivarama Krishna was suffering from Cancer, who breathed his last during the assessment proceedings, due to which being mentally disturbed and physically

weak, he could not comply the notices issued by the AO during the course of assessment proceedings along with supporting/necessary documents to substantiate the claim of the assessee-company. It was further contended by the ld. AR that since the unit was closed, the appeal notice could not be received by the Managing Director for which he could not appear in the appellate proceedings also to justify its claim. It was also the submissions of the ld.AR that since the entire additions could not properly be verified by the AO at the time of assessment proceedings, the impugned additions were made for want of evidence and the assessee has valid and sufficient reason for non-appearance before the AO and for non-production of necessary evidence. Therefore, ld. AR prayed that if one more opportunity be granted to the assessee for production of necessary evidence, the assessee could be able to justify its claim before the AO.

7. On the other hand, ld. DR relied on the orders of authorities below.

8. After hearing both the sides and perusing the entire material available on record, we find that that owing to the reasons as stated above, the assessee could not produced necessary evidence during the course of assessment proceedings. Even on perusal of the CIT(A)'s order, the assessee also could not appear in the appellate proceedings. Considering the facts and circumstances of the case and in the interest

of justice, we restore the appeal of the assessee to the file of AO and direct the AO to frame the assessment *de novo* considering the submissions of the assessee along with necessary documents, after providing sufficient opportunity of hearing to the assessee. The assessee is also directed to cooperate with the AO positively for early disposal of the case. We order accordingly.

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

Order pronounced in the open court on 16/03/2020.

**Sd/-**  
**(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

**कटक** Cuttack; दिनांक Dated 16/03/2020

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-  
Tarunshree Cotton (P) Ltd.,  
Kasturi Nagar,  
Rayagada, Orissa-765001
2. प्रत्यर्थी / The Respondent-  
DCIT Berhampur Circle,  
City/Dist-Berhampur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT,  
Cuttack
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**(Senior Private Secretary)**

**आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack**