

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER
(Through Virtual Hearing)

ITA No.1217/Hyd/2019	
Assessment Year: 2012-13	
M/s. Manikanta Minerals, Ongole. PAN: AAJFM 7802 M (Appellant)	Vs. ACIT, Circle-1, Ongole. (Respondent)
Assessee by:	Shri Sashank Dundu
Revenue by:	Shri Kiran Katta, DR
Date of hearing:	12/11/2020
Date of pronouncement:	18/11/2020

ORDER

PER D.S. SUNDER SINGH, A.M:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-1, Guntur, dated 21/6/2019 for the Assessment Year 2012-13.

2. The assessee has raised the following grounds in his appeal and they are extracted herein below for reference:

- “1. The Ld. First Appellate Authority is not justified in not appreciated the reasons for delay in filing the first appeal.
2. The Ld. First Appellate Authority is not justified in not adjudicating the grounds / issues on merits.
3. The Ld. First Appellate Authority failed to appreciate the fact that the Pr. Commissioner of Income Tax in his order U/s. 263 directed the Assessing Officer to examine the issues and decide

the respective issues in accordance with law and hence the First Appellate Authority is not justified in holding that it is not wise to adjudicate the case on merits.

4. *The appellant craves leave to add amend or alter any of the grounds at the time of hearing the appeal.”*

3. All the above grounds of appeal are against the order of the Ld. CIT(A)-1, Guntur on the issue of not condoning the delay and not deciding the appeal on merits.

4. In this case, Mr. K.A. Sai Prasad, FCA of Katrapati & Associates as well as Mr. Sashank Dundu, Advocate have filed the Power of Attorney to represent the case. During the course of appeal hearing, Mr. K.A. Sai Prasad has expressed no objection to represent the case by Mr. Shashank Dundu. Accordingly, Mr. Shashank Dundu is allowed to represent the appeal.

5. Ground No.1 is related to rejection of condonation of delay by the Ld. CIT(A). In this case, the assessment was completed U/s. 143(3) r.w.s 263 of the Act, by an order dated 10/03/2017 and the assessment order was served on the assessee on 13/3/2017. The assessee ought to have filed the appeal before the Ld. CIT(A) on or before 11th day of April, 2017 against which the assessee filed the appeal before the Ld. CIT(A) on 21/11/2018 with a delay of 553 days. Before the Ld. CIT(A), the assessee requested for condonation of delay by filing a letter dated 4/6/2019 stating that the appeal could not be filed before the due date as it was advised by the assessee's Counsel that the appeal is required to be filed before the Income Tax Appellate

Tribunal against the order passed u/s. 143(3) r.w.s 263, since, the order was giving effect to the order of Ld. PCIT. Accordingly, the assessee has stated that it has paid the appeal fees on 27/6/2017 and entrusted the case to the Ld. Counsel. On subsequent enquiry with the Ld. counsel regarding the status of appeal, the assessee came to know that the Advocate has not filed the appeal before the Tribunal and therefore the assessee has approached another advocate, who advised the assessee for filing the appeal before the Ld. CIT(A), thus, there was an inordinate delay in filing the appeal before the First Appellate Authority and hence requested the Ld. CIT(A) to condone the delay and decide the appeal on merits.

6. Ld. CIT(A) considered the submissions made by the assessee and found that there was an inordinate delay in filing the appeal and the assessee did not produce any letter from the Advocate from whom the appeal was entrusted. The assessee neither produced any evidence nor furnished the sufficient cause for delay in filing the appeal and therefore the Ld. CIT(A) held that there was no reasonable cause for condoning the delay and hence refused to admit the appeal and accordingly dismissed the appeal *in limine* against which the assessee in appeal before us.

7. During the appeal hearing, Ld. AR reiterated the submissions made before the Ld. CIT(A) and requested to condone the delay in the

interest of justice. Ld. AR further argued that the assessee is not going to get any benefit by not filing the appeal and there was no intention of delay in filing the appeal. The Ld.AR further argued that there is a good case for the assessee on merits and if the delay is not condoned, it would cause financial injury to the assessee and therefore requested to condone the delay and remit the matter back to the file of the Ld. CIT(A) for deciding the appeal on merits.

8. On the other hand, Ld. DR vehemently opposed for condoning the delay. The Ld. DR argued that in the absence of evidence for miscommunication or with regard to entrusting the appeal to the Advocate, there is no case for condoning the delay. The Ld. DR also submitted that each day of delay has to be explained by the assessee. In the instant case, there is no evidence for either handing over the appeal paper to the Advocate or misguidance given by the Advocate therefore, argued that there is no case for condoning the delay and no interference is called for in the order of the Ld. CIT(A).

9. We have heard both the parties carefully and perused the material on record. In the instant case, there was a substantial delay in filing the appeal before the First Appellate Authority. There was no dispute on this issue. The assessee has stated before the Ld. CIT(A) that the delay was due to mishandling the file by the Advocate who was not a regular Counsel for the assessee and also not willing to give letter

to that effect. It was also stated that appeal filing fees was also paid on 27/06/2017 with a misunderstanding that the appeal required to be filed before the ITAT and the Ld. Advocate has not filed before the ITAT as advised by him. Ultimately the appeal was neither filed before the CIT(A) nor before the ITAT. The fact that the appeal filing fees was paid on 27/06/2017 shows the intention of the assessee to file appeal and thus, we believe that there was a misguidance or misunderstanding by the assessee in filing the appeal. Though assessee was unable to submit the evidence we are of the considered view that there was some miscommunication with regard to filing the appeal and assessee should not suffer for the mistake of the counsel. The Hon'ble Supreme Court in the case of Esha Battacharjee vs. Managing Committee of Raghunthpur [2013] 5 CTC 547 laid down the principles for condoning the delay as under:

“15. From the aforesaid authorities the principles that can be broadly be culled out are:

- (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.*
- (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the Counsel or litigant is to be taken note of.*
- (v) Lack of bona fides imputable to a part seeking condonation of delay is a significant and relevant fact.*

- (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the eventuate there is no real unfettered free play.*
- (vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free paly.*
- (viii) *There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. This apart, the first one warrants strict approach whereas the second called for a liberal delineation.*
- (ix) *The conduct, behaviour and attitude of a party relating to this inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both the parties and the said principle cannot be given a total go by in the name of liberal approach.*
- (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
- (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- (xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

10. Hon'ble Supreme Court held that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay. The Courts are not supposed to legalise injustice but are obliged to remove injustice. In the instant case, the assessee has not filed appeal against the order passed U/s. 263 of the Act and if the appeal of the assessee is not entertained against the order U/s. 143(3) r.w.s 263 of the Act also, it may cause financial injury to the assessee and may result into uncalled for injustice. Hence, We are of the considered view that the case of the assessee must be heard on merits and a speaking order is required to

be passed against the additions made by the Assessing Officer in the order passed U/s. 143(3) r.w.s 263 of the Act. Therefore, in the interest of justice and respectfully following the principles laid down by the Hon'ble Apex Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur (supra), we, condone the delay and remit the matter back to the file of the Ld. CIT(A) with a direction to decide the appeal on merits by passing a speaking order as per law.

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

Pronounced in the open Court on 18th November, 2020.

Sd/-
(SMT. P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 18th November, 2020.

OKK

Copy to:-

- 1) M/s. Manikanta Minerals C/o. Ch. Parthasarathy & Co., 1-1-298/2/B/3, 1st Floor, Ashok Nagar, Hyderabad – 500 020.
- 2) Asst. Commissioner of Income Tax, Circle-1, 8th Line, Ramnagar, Ongole, Andhra Pradesh-523001.
- 3) The CIT(A)-1, Guntur.
- 4) The Pr. CIT, Guntur.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File

1.	Draft dictated on			
2.	Draft placed before author			
3	Draft proposed & placed before the second Member			

4	Draft discussed/approved by second Member			
5	Approved Draft comes to the Sr.P.S./PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of Dispatch of order			