

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA Nos. 316 to 318/JP/2020
निर्धारण वर्ष / Assessment Years: 2013-14 to 2015-16

Shri Rakesh Garg, 2, Pragati Colony, Near St. Stephen School, Madanganj, Kishangarh- 305801	बनाम Vs.	I.T.O. Ward-2, Kishangarh.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AATPG 8087 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv)
राजस्व की ओर से / Revenue by : Smt. Rooni Paul (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 28/01/2021
उदघोषणा की तारीख / Date of Pronouncement: 28/01/2021

आदेश / ORDER

PER: BENCH

These are the appeals filed by the assessee against the separate orders of the Id. CIT(A), Ajmer all dated 07/05/2019 for the A.Y. 2013-14 to 2015-16 respectively.

2. Since, common issues are involved in all these appeals, therefore, all are clubbed and heard together and for the sake of convenience, a common order is being passed.

3. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

4. For deciding the appeals, we take ITA No. 316/JP/2020 for the A.Y. 2013-14 as a lead case. In this appeal, the assessee has raised following grounds:

- “1. Under the facts and circumstances of the case, the Id. CIT(A) has erred in passing the ex parte order u/s 271B of the IT Act, 1961 without serving notice to the assessee for hearing.*
- 2. Under the facts and circumstances of the case the Id. CIT(A) has erred in confirming the penalty of Rs. 1,50,000/- u/s 271B imposed by the Id AO.*
- 3. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”*

5. During the course of hearing, the Id AR submitted that the assessee has filed the present appeal on 09/12/2020 against the order passed by the Id. CIT(A) relating to A.Y. 2013-14 alongwith an application seeking condonation of delay. It was submitted that the assessee wishes to resolve this matter and has since moved an application under Vivad Se Vishwas Scheme, 2020. The A.O. has enquired about the status of the condonation of delay application filed before the Tribunal in order for him to take appropriate action under Vivad Se Vishwas Scheme and it was therefore requested to consider the assessee’s condonation application.

6. In its condonation application, the assessee has submitted as under:

"The assessee is an individual. The penalty u/s 271B of the Income Tax Act 1961 was imposed by the learned AO vide order dated 26.06.2018. The assessee preferred appeal before the learned CIT(A), Ajmer on 20.07.2018. The learned CIT(A) has passed ex-parte order on 07.05.2019/27.05.2019 without giving any opportunity of being heard to the assessee. It has been came to knowledge of the assessee when assessee's application under Vivaad to Vivad Scheme was rejected by the CIT, Ajmer and the reason was that no appeal is pending. Then the counsel visited the site of ITBA of assessee it came to the knowledge of the assessee that the order has already been passed by the learned CIT(A), Ajmer vide order dated 07.05.2019 on ex-parte basis. The assessee has not received any notice for hearing of the appeal as well as the order passed by the CIT(A). The assessee was not aware about the passing of CIT(A)'s order till the rejection of application under Vivad se Vishwas Scheme by the PCIT, Ajmer. Therefore this application for condonation of delay is filing to file appeal before your honour.

If we presume that the order was received on date of order dispatched i.e. 07.05.,2019 then the appeal is delayed by 515 days which includes 365 days for COVID-19 pandemic.

Sir, our respectful submission is that in this case the date of receipt should be taken as 09.12.2020 when the assessee has taken note for passing the order. This is the time when first time the assessee has taken not of order. Alternately if it is presumed that order was received on 07.05.2019 then there is delay of 515 days which is due to the fact that the assessee has not received the appellate order on time. Copy of affidavit of the assessee is enclosed herewith that he has no knowledge of appeal order

passed by the learned CIT(A). Therefore your honor is requested to condone the delay caused due to the reason beyond the control the assessee.

It is settled position of law that where the delay was bonafide and there is sufficient cause for delay in filing appeal the delay must be condone by the appellate authority specially when it is necessary for rendering the substantial justice to the assessee. The following case laws are quoted in support: -

(i) Vijay Vishan Meghani vs. DCIT (Bombay High Court) (2017) 398 ITR 250

Appeal—Condonation of Delay—Claim for deduction under Section 80-O made by Assessee was disallowed by AO for Assessment Year 1993-94 and confirmed by the Commissioner of Income Tax (Appeals)—Against order of Commissioner, assessee preferred appeal before Tribunal—Tribunal restored matter back to file of AO for Assessment Year 1993-94—AO passed order allowing claim under that section of the I.T. Act, 1961—Assessee preferred rectification application to AO to rectify his order for Assessment Year 1994-95 and Assessment Year 1996-97—Rectification application was rejected by AO—CIT(A) upheld order of AO—Assessee filed application for condonation of delay in filling appeal against order of CIT(A)—Tribunal held that assessee simply put responsibility for delay on Revenue—Tribunal dismissed two appeals filed by assessee holding that same as barred by limitation—Tribunal held that delay of 2984 days in filling appeal could not be condoned—Held, Supreme Court in case of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and others held that legal advice tendered by a professional and litigant acting

upon it one way or other could be sufficient cause to seek condonation of delay and coupled with other circumstances and factors for applying liberal principles and then said delay can be condoned—None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate Authority found that litigant deliberately and intentionally delayed filing of appeal—Tribunal though aware of these principles but possibly carried away by fact that delay of 2984 days was incapable of condonation—In process Tribunal went about blaming assessee and professionals and equally Department—Tribunal's order did not meet requirement set out in law—Tribunal completely misdirected itself and had taken into account factors, tests and considerations which had no bearing or nexus with issue at hand—Tribunal, therefore, erred in law and on facts in refusing to condone delay—Explanation placed on affidavit was not contested nor Court found that from such explanation, High Court could not arrive at conclusion that assessee was at fault, he intentionally and deliberately delayed matter and had no bona fide or reasonable explanation for delay in filing proceedings—High Court condoned delay of 2984 days in filing appeals—Assessee's Appeals allowed.

(ii) Just Steels vs DCIT (2012) 74 DTR (MA) 86

Appeal could not be filed in time before the ITAT because the order of CIT(A) was misplaced. The firm stood dissolved and was recurring into losses. Delay to be condoned.

(iii) Oracle India Pvt Ltd vs. Deputy Commissioner of Income Tax (2008) 13 DTR 371 that "condonation of delay — reasonable cause — delay of 1297 days in filing appeal being on account of lapse on the part of consultant and not being malafide, there was

valid reason warranting condonation of delay and admission of appeal". Copy of order is enclosed.

(iv) *Improvement Trust vs. Ujagar Singh (Supreme Court) CIVIL APPEAL NOS. 2395 of 2008 dated 26.06.2010*

Unless mala fides are writ large, delay should be condoned. Matters should be disposed of on merits and not technicalities. The Appellant, a local authority, acquired land belonging to one of the Respondents for a development scheme in 1988. As the Appellant did not pay the compensation amount despite notice, the property was auctioned and sale confirmed in favour of the highest bidder in 1992.

The bidder deposited the sale proceeds. The Appellant then "woke up from its slumber" and filed objections before the Single Judge for setting aside the auction sale. Even in these proceedings, the Appellant did not appear and the same were dismissed for nonappearance. The sale deed was executed in favour of the highest bidder. The Appellant then filed an appeal before the District Judge which was barred by limitation by a couple of months. This appeal was dismissed on the ground that there was not sufficient ground for condonation of delay. On mistaken advice, the Appellant filed a second appeal to the High Court which was thereafter treated by the Court as a revision application. This was also dismissed. The Appellant then filed a review petition which was also dismissed. Against that the Appellant filed a SLP which was also delayed. The delay in filing the SLP was condoned and the question before the Supreme Court was whether the District Judge was justified in dismissing the first appeal on the ground of delay. HELD allowing the appeal:

(a) While considering an application for condonation of delay no strait-jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. **From the conduct, behaviour and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter;**

(b) Justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at the threshold;

(c) **Unless malafides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned.** In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities. Apart from the above, **the appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation.** It is also worth noticing that delay was also not that huge, which could not have been condoned, without putting the respondents to harm or prejudice. It is the duty of the Court to see to it that justice should be done between the parties;

(v) **Hon'ble Apex Court in Collector, Land Acquisition vs. Mst. Katji & Ors (supra)** held that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, the other side cannot claim to have vested right in injustice being done because non-deliberate delay. There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on a malafide.

The litigation does not stand to benefit by resorting to delay, in fact he is on serious risk.

*(vi) **Hon'ble Madras High Court in S. Duraipandi** (supra) held that where assessee faced the financial hardship to pay tax due to relevant time and after making sufficient arrangement of funds can pay taxes, due to delay was to be condoned.*

*(vii) **Co-ordinate Bench of Cochin Tribunal in Kaikara Construction Co.** (supra) also held that facing acute financial crisis and multiple legal proceeding can be treated as a reasonable ground for delay in filing appeal before the Id. CIT(A). Similarly, the Co-ordinate Bench of Delhi Tribunal in ACIT vs. Jay Dee Securities & Finance Ltd. (supra) held that where there was no gross negligence or laches on the part of assessee, the delay should be condoned and appeal of the assessee should be heard on merit.*

(viii) The Hon'ble Supreme Court in Vedabai Aoiyas Vaijayanatabai Baburao Patil vs. Shantaram Baburao Patil (supra) held that the Court should adopt pragmatic approach. The distinction must be made between a case where there is inordinate and a case where the delay is of a few days. In the former case, the consideration of prejudice to the other party will be a relevant factor so the case call for more cautious approach but in the later case no such consideration may arise and such a case deserves a liberal approach, no hard and fast rule can be laid down in this regard. The court has to exercise the discretion of the facts of each keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance.

(ix) The Hon'ble Supreme Court in B. Madhuri Goud v. B. Damodar Reddy (2012) 12 SCC 693, by referring various to earlier decisions of Superior Courts and held the following principal must be kept in mind while considering the application for condonation of delay;

(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 cause 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 party 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 ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its 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 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 litigation.

(xi) It is to be borne in mind that no one gets away with fraud, is representation 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."

In the circumstances it is submitted that it was because of the bonafide mistake on the part of the assessee that he has no knowledge about the completion of the CIT(A)'s order ex-parte and he did not inquire about the service of judgment. The appeal could not be filed in time. It is submitted that for something which happened due to inadvertence and beyond the control. Hence it is the prayer of the assessee as well as of the counsel that the Hon'ble Bench may kindly condone the delay and admit the appeal."

7. It was submitted by the Id AR that there was no malafide or deliberate delay in filing the present appeal and in the interest of substantial justice, the delay in filing the present appeal may be condoned and the appeal be admitted for adjudication. It was further submitted that there is no prejudice which will be caused to the department as the assessee has already moved an application for settlement of present dispute and payment of taxes. In support, reliance was placed on the Hon'ble Delhi High Court's decision in case of HL Malhotra & Company Pvt. Ltd. Vs DCIT, Circle-12, New Delhi (*ITA No. 211/2020 & CM Appeals 32045-32047/2020 dated 22nd December, 2020*) wherein delay of 498 days in filing was condoned by the Hon'ble Delhi High Court and it was held that in absence of anything male fide or deliberate delay as a dilatory tactic, the Court should normally condone the delay as the intent is always to promote substantial justice following the Hon'ble Supreme Court decisions in the case of Collector, Land

Acquisition, Anantnag & Anr. Vs Mst. Katiji and others (1987) 2 SCC 107 and N. Balakrishnan Vs M. Krishnamurthy 1998 (7) SCC 123.

8. Per contra, the Id. DR submitted that there is a substantial delay of 515 days in filing the present appeal by the assessee and the application and the affidavit so filed by the assessee company does not reflect any reasonable cause on the part of the assessee for the delay in filing the present appeal. She submitted that the fact that the assessee will not make any difference and the test of sufficient and reasonable cause need to be equally satisfied by it. She accordingly opposed condoning the delay in filing the present appeal.

9. We have heard the rival contentions and perused the material available on record. There is no dispute and is an admitted fact that there has been a delay in filing the present appeal by 515 days. There is also no dispute that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation where it is satisfied that there exists a sufficient cause on the part of the assessee company for not presenting the appeal within the prescribed time. The explanation of the assessee therefore becomes relevant to determine whether the same reflects sufficient and reasonable cause on its part in not presenting the present appeal within the prescribed time. In the instant case, the Id.

CIT(A) has passed ex-parte order. It has come to knowledge of the assessee when application under Vivaad to Vivad Scheme was rejected by the CIT, Ajmer and the reason was that no appeal is pending. Then the counsel visited the site of ITBA of assessee then it came to the knowledge of the assessee that the order has already been passed by the Id. CIT(A), Ajmer vide order dated 07.05.2019 on ex-parte basis. The assessee has not received any notice for hearing of the appeal as well as the order passed by the CIT(A). The assessee was not aware about the passing of CIT(A)'s order till the rejection of application under Vivad se Vishwas Scheme by the PCIT, Ajmer. However, as soon as assessee came to know of subsequent penalty order being passed against it, it consulted its Counsel and basis his advice, the present appeal has been filed though with a delay of 515 days.

10. In case of **Collector, Land Acquisition vs MST Katiji (Supra)**, the Hon'ble Supreme Court has held that *the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that 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. Another principle laid down by the Hon'ble Supreme Court is that 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. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and it does not stand to benefit by resorting to such delay more so considering the fact that it has applied for settlement of present dispute and payment of appropriate taxes. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay in filing the present appeal and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred.

11. Though assessment and penalty proceedings are independent proceedings but at the same time, there is a close connection between the two proceedings and where the assessee has filed the present appeal apparently to safeguard its rights in relation to the penalty proceedings, the assessee cannot be denied and deprived of his legal defence and pleadings which he may take as so advised in the course of the penalty proceedings. Therefore, without going into the merits of levy of penalty which is not the subject matter of present dispute, where the assessee wishes to plead against levy of penalty, the Tribunal cannot be oblivious of its duty by denying such right to the assessee on mere technicality of delay in filing the present appeal.

12. In light of aforesaid discussions, in exercise of powers under section 253(5) of the Act, we hereby condone the delay in filing the present appeal as we are satisfied that there was sufficient cause for not presenting the appeal within the prescribed time and the appeal is hereby admitted for adjudication on merits. The Registry is directed to list the matter in due course.

13. Now we take ITA No. 317 & 318/JP/2020 for the A.Y. 2014-15 and 2015-16 respectively.

In both these appeals also, there were delay of 502 days in filing these appeals. The Id AR also filed applications for condoning the delay. The facts and submissions of both the parties are identical to the facts and submissions of ITA No. 316/JP/2020 for the A.Y. 2013-14, therefore, our finding given in ITA No. 316/JP/2020 for the A.Y. 2013-14 shall apply mutatis mutandis in these years also. Accordingly, delay in filing of these appeals are also condoned and the appeals are also admitted for hearing. In these appeals also, the Registry is also directed to list the matters in due course.

Order pronounced in the open Court on 28/01/2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/01/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Rakesh Garg, Kishangarh.
2. प्रत्यर्थी / The Respondent- The I.T.O. Ward-2, Kishangarh.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 316 to 318/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar