

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

**BEFORE Mrs. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI R.L NEGI, JUDICIAL MEMBER**

ITA No. 271/Chd/2020)

निर्धारणवर्ष / Assessment Year : 2010-11

Shri Manjinder Singh, # 332, Sector 44A- Chandigarh	बनाम	The Income Tax officer, Ward-5(2), Chandigarh
स्थायीलेखासं./PAN NO: BICPS9577B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितकीओरसे/Assessee by : Shri Parikshit Aggarwal, CA
राजस्वकीओरसे/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT
Shri Ashok Khanna, Addl CIT

सुनवाईकीतारीख/Date of Hearing : 28.01.2021
उदघोषणाकीतारीख/Date of Pronouncement : 28..01.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 30.6.2017 passed by the Commissioner of Income Tax (Appeals)-2, Gurgaon, [(for short 'the CIT(A)], pertaining to the assessment year 2010-11, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 144 of the Income Tax Act, 1961 (for short 'the Act').

2. At the outset, the Ld. Counsel for the assessee submitted before us that the assessee wants to settle his dispute under Vivad Se Vishwas Scheme 20209. However, there is there is a delay of 89 days in

filing the present appeal and the assessee has filed an application for condonation of delay duly supported by an affidavit. The Id. Counsel further submitted that as per the CBDT Circular No.21/2020 dated 04/12/2020, the appellant/assessee is eligible to opt for the Scheme in such cases, if the appellate authority concerned condones the delay in such cases.

3. The Id. Counsel further submitted that appellant/assessee being non-resident Indian remained out of country during the period from 07.07.2017 to 26.06.18, due to which he did not receive the impugned order passed by the Id. (CITA). The Id. Counsel invited our attention to the copies of the Passport and other documents attached with the application to substantiate the contention of the assessee. The Id. Counsel further submitted that the assessee received copy the order on 21.1.2020. Accordingly, he deposited the appeal fee on 20.3.2020. However, due to nationwide lock-down in the wake of Covid-19, the assessee could not obtain the necessary documents from the concerned quarters for filing the present appeal. The Id. Counsel further submitted that since the assessee could not file the present appeal within limitation period due to the circumstances beyond his control, the delay may be condoned and the present appeal may be dismissed as withdrawn so that the assessee may avail the benefit of the provisions of Vivad Se Vishwas Act,2020.

4. On the other hand, the Id. DR opposed the delay on the ground that the reasons stated are not sufficient to condone the delay in filing the present appeal.

7. We have heard the rival submissions and perused the material available on record. As pointed out by the Ld. Counsel, the assessee remained out of the country during the period 07.07.2017 to 26.6.2018. The assessee has furnished the documentary evidence including copy of passport to prove this fact. Further, the assessee has stated in his affidavit that he received the copy of the impugned order on 21.1.2020 and he deposited the required appeal fees on 21.3.2020, however, due to the nationwide lock down the assessee could not file the present appeal within the limitation period.

8. The Hon'ble Supreme Court in the case of Collector, *Land Acquisition vs Mst. Katiji & Ors (1987) AIR 1353, 1987 SCR (2) 387* has laid down the principles of law to be followed while dealing with the issue of condonation of delay which read as under: -

- “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.”*

7. In the present case, the assessee could not file the appeal within the period of limitation due to the circumstances beyond his control. In our considered view, the reasons stated by the assessee are sufficient to condone the delay. Further, since the assessee intends to opt for Vivad Se Vishwas Scheme, no prejudice is going to be caused to the revenue in case the delay is condoned. Hence, in the light of the facts and circumstances of the case and the principles of law laid down by the Hon'ble Supreme Court in the case of *Land Acquisition vs Mst. Katiji & Ors* (supra) and further in view of the fact that the assessee wants to settle the issues involved in the appeal under the provisions of Vivad Se Vishwas Act, we condone the delay in filing the present appeal in the interest of justice and dismiss the appeal of the assessee as withdrawn with the liberty to file miscellaneous application for restoration of

appeal, in case the assessee does not get relief under Vivad Se Viswas Scheme.

In the result, appeal filed by the assessee is dismissed as withdrawn.28.01.2021.

Order pronounced on 28.01.2021.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(R.L.NEGI)
Judicial Member

Dated :
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar