

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

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

(ITA Nos. 300 & 301/Chd/2020)

निर्धारणवर्ष / Assessment Year : 2010-11

M/s Aditya Medicos, Shop No. 4, New Shopping Complex, Sector 12, Chandigarh	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायीलेखासं./PAN NO: AAQFA8675H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितीकीओरसे/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 : .01.2021

आदेश/Order

Per Bench:

The assessee has filed the captioned appeals against order dated 25.01.2017 passed by the Commissioner of Income Tax (Appeals)-3, Gurgaon [(for short 'the CIT(A)'] and order dated 7.6.2019 passed by CIT(A)-3, Gurgaon. Vide first order, the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order u/s 144 read with section 143(3) of the Act (for short 'the Act') and vide second order the Ld. CIT(A) has dismissed the appeal file by the assessee

against the penalty order passed by the Assessing Officer u/s 271(1)(c) of the Act.

2. The Id. Counsel for the assessee submitted before us that the assessee wants to opt for Vivad Se Viswas Scheme, 2020, however, since there is a delay in filing of these appeals and as per Circular No. 21/2020 dated 4.12.2020 issued by the CBDT, the assessee will be eligible in such cases if the competent authority condones the delay in filing the appeals.

3. The Ld. counsel further submitted that there is a delay of 1061 days in filing the appeal against quantum order passed by the Id. CIT(A) and there is a delay of 334 days in filing the appeal against the order confirming penalty imposed by the AO u/s 271(1)(c) of the Act. The Ld. Counsel further submitted that assessee has filed separate applications for condonation of delay duly supported by affidavits. The Ld. Counsel contended that the order passed by the Ld. CIT(A) had some factual mistakes and in the opinion of the assessee these were rectifiable u/s 154 of the Act. Accordingly, the assessee moved application dated 30.5.2017 u/s 154 of the Act for rectification of the appellate order. However, the Ld. CIT(A) never fixed the hearing on the said application even after repeated requests made by the assessee. Then after passing of the penalty order, the assessee decided to file the appeal before the Tribunal against the impugned order, however, kept waiting for decision

on application filed u/s 154 of the Act. The application was ultimately disposed of in the month of January 2020 by dismissing the same. Thereafter the partner of the assessee firm became ill and could not complete the necessary formalities to file the appeals. On 24.03.2020, nationwide lockdown in the wake of Covid 19 Pandemic. After the government relaxed the restrictions the assessee got all the documents arranged and filed the appeals without any further delay. The Ld. counsel further submitted that since the delay was caused due to reasons beyond control of the assessee, the applications for condonation of delay in both the cases may be allowed and the delay may be condoned and the assessee's appeals may be dismissed as withdrawn.

4. The Ld. DR submitted that the delay in both the appeals are inordinate and the assessee has failed to establish sufficient cause to condone the delay in these cases. However, the Ld. DR further submitted that since the assessee wants to opt for Vivad Se Vishwas Scheme 2020, lenient view may be taken and the appeals may be disposed of accordingly.

5. We have heard the rival submissions and perused the material on record. As pointed out by the Ld. Counsel, the assessee moved application dated 30.5.2017 u/s 154 of the Act for rectification of the impugned order passed by the Id. CIT(A). The said application was dismissed by the Id. CIT(A) in the month of January 2020. Thereafter

the partner of the assessee firm became ill and could not complete the necessary formalities to file the appeals. On 24.03.2020, nationwide lock down was declared in the wake of Covid 19 Pandemic. After the government relaxed the restrictions the assessee got all the documents arranged and filed the appeals without any further delay.

6. 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 to be followed while dealing with the issue of condonation of delay which are as follows:-

- “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 cases, though the delay is inordinate, however, in view of the fact that the assessee wants to avail the benefit of the provisions of Vivad Se Viswas Act, 2020 and the assessee has explained the cause of delay in filing the present appeals, we are of the considered view that no prejudice is going to be caused to the revenue in case the delay is condoned in both the cases. Accordingly, in view of the principles laid down by the Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs Mst. Katiji & Ors* (supra) we take a lenient view and allow the applications for condonation delay and dismiss both the cases of the assessee as withdrawn with the liberty to file M.As. for restoration of the appeals in case the issues involved are not settled under the provisions of Vivad Se Viswas Act, 2020.

In the result, both the appeals of the assessee are dismissed.

Order pronounced on 28.01.2021.

Sd/-

(ANNAPURNA GUPTA)
Accountant Member

Dated :

“आर.के.”

Sd/-

(R.L.NEGI)
Judicial Member

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