

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

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRIR.L NEGI, JUDICIAL MEMBER**

ITA No.780/Chandi/2019

निर्धारणवर्ष / Assessment Year : 2010-11

M/s Sham Fashion Mall, SCO 168-169, Sector 34-A, Chandigarh	बनाम	The ACIT, Circle 4(1), Chandigarh
स्थायी लेखासं./PAN NO: ABCFS0250R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितकीओरसे/Assessee by : Shri Tej Mohan Singh, Advocate
राजस्वकीओरसे/ Revenue by : Shri Ashok Kumar, Addl CIT

सुनवाईकीतारीख/Date of Hearing : 17.02.2021
उद्घोषणाकीतारीख/Date of Pronouncement : 23.02.2021

आदेश/Order

Per R.L. Negi Judicial Member:

The assessee has filed the present appeal against the order dated 06.02.2019 passed by the Commissioner of Income Tax (Appeals)-2, Chandigarh, [(for short 'the CIT(A)'] for the assessment year 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. At the outset, the Ld. Counsel for the assessee submitted before us that the assessee wants to settle its dispute under the provisions of Vivad Se Viswas Scheme 2020, however, since there is delay of 3 days in filing appeal, the assessee has filed an application for condonation of

delay duly supported by an affidavit. The Ld. Counsel further submitted that as per the CBDT Circular No. 21/2020 dated 4.12.2020, the assessee is eligible to opt for the scheme if the appellate authority condones the delay in filing of the appeals.

3. The ld. Counsel further submitted that Shri Davinder Singh partner of the firm, who used to look after the affairs of the firm, could not attend the office of the firm during the relevant period due to illness of his aged mother. When he resumed his duties, the limitation period for filing the appeal had already been expired. The ld. Counsel further submitted that the delay was not caused due to negligence or inaction on the part of the assessee but was caused due to a *bona fide* reason. In view of the aforesaid facts and circumstances of the matter, the ld. Counsel submitted that the application of the assessee may be allowed and the delay of three days in filing the present appeal may be condoned and the appeal of the assessee may be dismissed as withdrawn so that the assessee may avail the benefit of provisions under Vivad Se Viswas Act, 2020.

4. On the other hand, the Ld. Departmental Representative opposed the application on the ground that there was no sufficient cause which prevented the assessee to file the present appeal within limitation period.

5. We have considered the rival submissions and perused the material on record. As stated by the Ld. Counsel, Shri Davinder Singh, partner of

the assessee firm could not file the present appeal within limitation period as he remained busy in connection with the treatment of his aged mother. Mr. Davinder has sworn an affidavit in support of the contention of the assessee firm.

6. The Hon'ble Supreme Court in the case of *Collector Land Acquisition vs Mst.Katiji & Ors (1987) AIR 1353*, 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 case, we do not find any inaction or negligence on the part of the assessee. In our considered view, the assessee had a

sufficient cause which prevented it from filing the present appeal within the limitation period. 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 *Collector Land Acquisition vs Mst. Katiji & Ors* (supra), we condone the delay of 3 days in filing the present appeal and dismiss the appeal of the assessee as 'withdrawn' with a liberty to get the appeal restored by filing M.A., in case the issues are not settled under Vivad Se Viswas Scheme.

8. In the result, appeals filed by the assessee are dismissed as withdrawn.

Order pronounced on 23.02.2021.

Sd/-
(N. K. SAINI)
Vice President

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