

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", 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 No. 280/JP/2018
निर्धारण वर्ष / Assessment Year :2011-12

Vijay Jaikishan Massand, 480, Shastri Nagar, Dadabari, Kota.	बनाम Vs.	A.C.I.T., Circle-2, Kota.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AJOPM 0580 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Saurabh Harsh (CA)
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary(Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 16/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 16/03/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the assessee against the order of the Id. CIT(A), Kota dated 21/03/2017 for the A.Y. 2011-12.

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

3. In this appeal, there is delay of 263 days in filing the present appeal. In this appeal also, the assessee has applied for withdrawal of this appeal. During the course of hearing, the Id AR submitted that the assessee has filed the present appeal against the order passed by the Id. CIT(A) 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.

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

"The humble assessee appellant respectfully prays for the condonation of delay in the filling of Appeal for the following reason:

- 1. That the Id. CIT (Appeals) passed his order on 21.03.2017 which was served upon the assessee applicant on 11.04.2017.*
- 2. That the assessee appellant applicant is suffering from Agitating Depression and he was in Mumbai for his treatment during the time of service of the order passed by the Id. CIT (Appeal) and due to his travelling he failed to discuss the next step to be taken with his counsel.*
- 3. That immediately after returning to Kota and receipt of appeal order of Id. CIT(A), without any further delay, at the first opportunity, the assessee with the help of his counsels has filed this appeal before the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur on 28.02.2018 with delay of 263 days.*
- 4. An Affidavit duly sworn in this regard with copies of medical record are also enclosed herewith.*

With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and was purely because of shortage of time due to travel and lack of understanding of the income tax proceedings.

That in these circumstances we request your honour's to kindly condoned the delay and oblige."

5. 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.**

6. Per contra, the Id. DR submitted that there is a substantial delay of 263 days in filing the present appeal by the assessee and the application so filed

by the assessee does not reflect any reasonable cause on the part of the assessee for the delay in filing the present appeal. She accordingly opposed condoning the delay in filing the present appeal.

7. We have heard the rival contentions and pursued 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 263 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 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 his part in not presenting the present appeal within the prescribed time. In the instant case, it has been stated by the assessee is suffering from Agitating Depression and he was in Mumbai for his treatment during the time of service of the order passed by the Id. CIT (Appeal) and due to his travelling he failed to discuss the next step to be taken with his counsel, hence, the filing of the appeal was delayed. Immediately after returning to Kota and receipt of appeal order of Id. CIT(A), without any further delay, at the first opportunity, the assessee with the help of his counsels has filed this appeal before Bench on 28.02.2018 with delay of 263 days.

8. 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-serve 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.

9. 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.

10. 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.

11. Since, the assessee has applied for withdrawal of this appeal on the ground that the assessee has opted Vivad Se Vishwas Scheme and the department has issued Form No. 3, therefore, we permit the assessee to withdraw this appeal.

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

Order pronounced in the open court on 16th March, 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:-16/03/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Vijay Jaikishan Massand, Kota.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-2, Kota.
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. 280/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar