

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. 1525/JP/2018  
निर्धारण वर्ष / Assessment Year :2010-11

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|---|-------------|----------------------------------|
| Sushma Sharma,<br>7.5 KM, Main Agra Road, Prem<br>Nagar Pulia, Jaipur-302003. | बनाम<br>Vs. | I.T.O.,<br>Ward 6(3),<br>Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BBTPS 9363 R                          |             |                                  |
| अपीलार्थी / Appellant   |             | प्रत्यर्थी / Respondent          |

निर्धारिती की ओर से / Assessee by: Ms. Shivangi Samdhani (CA)  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary(Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 12/03/2021  
उदघोषणा की तारीख / Date of Pronouncement : 12/03/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

This appeal has been filed by the assessee against the order of the Id. CIT(A), Ajmer dated 17/10/2018 for the A.Y. 2010-11.

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 16 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 her to take appropriate action under Vivad Se Vishwas Scheme and it was therefore requested to consider the assessee's condonation application.

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

*"Order u/s 143(3) r.w.s. 147 of Income Tax Act, 1961 for the A.Y. 2010-11 was passed on 11.09.2017. The first appeal was preferred before Id. CIT(A) which was partly allowed vide order dated 17.10.2018. The assessee received certified true copy of the order, as evident from the CIT(A) order attached in appeal set, from the office of CIT(A) on 14.12.2018. Accordingly, the appeal was filed on 31.12.2018.*

*The assessee has opted for Vivad se Vishwas Scheme. The department has issued Form 3 stating that there was delay in filing of appeal. Therefore, it appears that the department has made calculation from the date when order was passed. With the said calculation a delay of 16 days has taken place. It is submitted that delay was not deliberate. A humble prayer is made for condonation of delay.*

*Reliance is placed on the following judicial pronouncement of the Hon ble Supreme Court:*

*Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 471*

*"The legislature has conferred the power to condone delay by enacting S.5 of the Limitation Act of 1963 in order to enable the*

*courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the end of justice—that being the life-purpose of the existence of the institution of courts."*

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 22<sup>nd</sup> 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 16 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 16 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 that the department has issued Form 3 stating that there was delay in filing of appeal. Therefore, it appears that the department has made calculation from the date when order was passed. With the said calculation a delay of 16 days has taken place.

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 12<sup>th</sup> 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:- 12/03/2021

\*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Sushma Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 6(3), Jaipur.
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. 1525/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar