

आयकर अपीलीय 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. 1225/JP/2019  
निर्धारण वर्ष/Assessment Year : 2009-10

Sh. Munawar Ali Munshi Lohar, 509, Balaji Tower-1, Near S.K. Soni Hospital, Sikar Road, Jaipur.	बनाम Vs.	The ACIT, Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABXPL7233L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vikram Kumar Gupta (CA)  
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing: 05/04/2021  
उदघोषणा की तारीख/ Date of Pronouncement: 05/04/2021

आदेश / ORDER

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

The present appeal has been filed by the assessee against the order of CIT(A)-II, Jaipur dated 28.06.2019 for the assessment year 2009-10.

2. 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 57 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:

*"Originally the order was passed by Ld. CIT-Appeals on 28.06.2019 which was received by the assessee on 05.07.2019 and assessee was required to file Appeal on or before 04.09.2019 in terms of the provisions of Section 253 but filed Appeal on 30.10.2019 late by 56 days.*

*The assessee was not in possession of the original documents of previous proceedings because of the previous AR was other than the present who did not handed over the documents to the assessee, due to this fact the appeal could not be filed on time. The assessee has stated all the facts vide his letter dated 24.10.2019 while filing appeal (copy enclosed)- Page No. 5 to 6.*

*Being the genuine and bonafide reason and considering the small tax payer who cannot be supposed to the conversant with the procedural law and otherwise the matter has been settled under Vivad se Vishwas Scheme.*

*Under the facts and circumstances of the case, your honourable Bench is hereby requested for admission of appeal by condoning the delay in filing and deemed to be withdrawn in terms of the provisions of Section 5(1) of the Vivad se Vishwas Act.”*

5. It was submitted by the Id AR 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 57 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 perused 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 57 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 its part in not presenting the present appeal within the prescribed time. In the instant case, it has been stated by the assessee that the delay in filing the appeal was due to the fact that the assessee was not in possession of the original documents of previous proceedings because of the previous AR was other than the present who had not handed over the documents to the

assessee, due to this fact the appeal could not be filed on time. Hence, the filing of the appeal was delayed

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. 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.

10. 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.

11. In the result, this appeal of the assessee is dismissed as withdrawn.

Order pronounced in the open court on 05/04/2021.

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 05/04/2021.

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

1. अपीलार्थी / The Appellant- Sh. Munawar Ali Munshi Lohar, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-4, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1225/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar