



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**  
[Through Virtual Hearing]  
**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

In ITA No.568 & 569/LKW/2019  
Assessment Year: 2013-14 & 2014-15

Jedy Tapes Private Limited 16/1A. Abdul Hamid Street 5 <sup>th</sup> Floor, Kolkata West Bengal		DCIT CC-II Lucknow
TAN/PAN:AAACJ8642E		
(Applicant)		(Respondent)

Appellant by:	Smt. Priyanka Ajit Saria, FCA		
Respondent by:	Shri Ajay Kumar, D.R.		
Date of hearing:	24	03	2021
Date of pronouncement:	24	05	2021

**ORDER**

**PER A. D. JAIN, V.P.:**

ITA No.568/LKW/2019

The assessee's appeal for assessment year 2013-14 against the order of levy of penalty of Rs.25 lakhs under section 271(1)(c) of the I.T. Act was dismissed by the Id. CIT(A) by virtue of the impugned order dated 16.8.2019, holding it to be time-barred by 836 days of limitation and no sufficient cause having been made out for condonation of the delay.

2. The assessee is in appeal before us.
3. Challenging the order under appeal, the assessee has taken the following effective grounds of appeal:

*1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not adjudicating various grounds of appeal properly though elaborate statement of facts were submitted and appearance was made by the Ld. A/R and the case was argued before her.*

2. For that the Ld. CIT(A) ought to have quashed the entire penalty of Rs.25,00,000/- levied u/s. 271(l)(c) by the A.O. vide order dated 27/09/2016 since the said order is without jurisdiction, illegal, erroneous and void ab initio

3. For that the Ld. CIT(A) was not justified in holding that there was not sufficient and reasonable cause made out by the Appellant in filing the appeal which were delayed by 836 days.

4. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the action of the A.O. without deliberating upon substantial question of law.

5. For that the Ld. CIT(A) ought to have held that the A.O, not having satisfied as to the valid assumption of jurisdiction and also validity of search u/s 132, was not justified in issuing notice u/s 274 read with section 271 of the Income Tax Act, 1961 and to pass the impugned order u/s 271(1)(c).

6. For that the ld. CIT(A) ought to have held that the A.O. was not justified in passing the impugned order u/s 271(1)(c), inasmuch as it contravened the provisions prescribed u/s 274 of the Act.

7. For that the order allegedly passed by the Ld. CIT, Kolkata-II under section 127(2) of the Act was otherwise illegal and void ab initio in absence of valid service of the said order on the Appellant assessee and therefore the Ld. CIT(A) ought to have held that the order passed by the Ld. DCIT u/s 271(1)(c) of the Act was illegal and void ab initio.

8. For that the search u/s 132 in the case of the assessee was illegal and the assessment framed pursuant thereto is void ab initio inasmuch as there was neither a valid search warrant in the assessee's case nor there existed any of the conditions referred to in sec. 132(1).

4. The ld. Counsel for the assessee has contended that the ld. CIT(A) has erred in holding that there was no sufficient and reasonable cause made out by the assessee for the delay incurred in filing the appeal; that the ld. CIT(A) failed to take into consideration the fact that the very existence and continuity as a going concern of the assessee Company was itself in jeopardy due

to lack of funds, since its funds, having been seized during the search and seizure operation conducted on the assessee, were in the control of the Department only; that the FDRs (amounting to Rs.7.05 crores) constituting more than 99% of the liquid funds, of the assessee, its only source of funds, which during the year, had been seized during the search and were on the control and custody of the Department had not been released, in contravention of the provisions of section 132B of the Act, despite numerous requests and reminders for releasing them, stating clearly that otherwise, the assessee would be compelled to commit default in the filing of Return of income for not being able to pay self-assessment tax before filing the Return, as prescribed by section 139(a) of the Act; that interest on the seized FDRs would have been the only source of income of the assessee Company; that besides, in the interregnum, on 11.2.2014, a key person of the Group had passed away and on 3.4.2015, a Director had expired (Death CertificateS of both these persons STAND attached at APB 39 & 40, respectively); and that the ld. CIT(A), while erroneously observing that it was difficult to accept that a Private Limited Company, which was assisted by professionals, could be ignorant of the provisions of the law, had failed to consider that in the face of the financial crunch it was countering, the assessee Company was not in a position even to pay advance tax and/or self-assessment tax for the year under consideration, what to talk of being able to afford legal Counsel fees, due to which, proper and timely legal advice was not forthcoming.

5. The ld. Counsel for the assessee has submitted that in the above facts and circumstances, the order under appeal be cancelled, the unintentional delay incurred in filing the appeal before the ld. CIT(A) be condoned and the appeal be taken up for hearing on merits.

6. The Id. D.R., on the other hand, has strongly supported the impugned order. It has been averred that the assessee indeed failed to prove any sufficient reasonable cause for the delay in filing the appeal and, therefore, the Id. CIT(A) was justified in refusing to condone the delay.

7. We have heard the rival contentions and have perused the material placed on record.

8. The assessee had pleaded before the Id. CIT(A) that there had been two reasons for the incurrance of the delay in filing the appeal; that the assessee was not given proper and timely advice by their Counsel about the applicability of the provisions of law; and that since its funds were in the control of the Department, having been seized during the search conducted, the existence and continuity of the assessee as a going concern was itself in jeopardy.

9. The Id. CIT(A) has dismissed the Assessee's appeal, refusing to condone the delay, holding thus:

*"2. The facts of the case are that the penalty order u/s 271(1)(c) was passed by the Assessing Officer levied of penalty of Rs.25,00,000/- . Aggrieved with this penalty order, the appeal has been preferred by the appellant.*

*3. During the course of appellate proceedings, Ms. Priyanka Ajitsaria, FCA, appeared before me and filed written submission. I proceed now to decide the issues raised on the basis of grounds of appeal involved in the appeal before me.*

*4. Alongwith the appeal memo the appellant filed the affidavit dated 18/02/2019 for condonation of delay in filing appeal.*

#### FINDING

*1. The penalty order in this case was passed on 27/09/2016 by the AO and appellant filed the appeal on 18/02/2019 after 836 days of penalty order. The appellant in the affidavit dated 18-02-2019 contended as under:*

"...3. That the penalty order for the assessment year 2013-14 of the assessee Company has been passed by the Asstt. Commissioner of income Tax by order dated 27/09/2016. That we received a penalty order for the assessment year 2013-14 under section 271(1)(c) of the Income Tax Act, 1961 on 3/10/2016.

5. That the time for filing of the appeal before the CIT(Appeals) was to expire on 2/11/2016.

6. That as per the said order, I found that a penalty of Rs.25,00,000/- has been levied for concealment of income amounting to Rs.79,31,687/-.

7. That the penalty was levied without giving the assessee company a reasonable opportunity of being heard.

8. That the revenue has recovered the penalty amounts of Rs.25,00,000/- on 25/11/2016, by encashing the fixed Deposit Receipts seized by the Income Tax Department.

9. That the Company was not given proper and timely advise by our legal counsel about the applicability of the provisions of law.

10. That the assessee company's existence and continuity as a going concern was itself in jeopardy, due to lack of funds, since the same was in control of the Income Tax Department only, being seized during alleged search and seizure operation.

11. That I had no intention to jeopardize the interest of the FDR and delaying the filing of the appeal.

2. On examination, I find that the penalty order u/s 271(1)(c) of the I. T. Act has been passed by the AO on 27/09/2016, whereas as per Form 35, the appeal has been filed on 18/02/2019. Therefore the appeal has been filed late by 836 days. The appellant has filed affidavit dated 18/02/2019 for condonation of delay in filing the appeal. The appellant has stated that the Company was not given proper and timely advise by our legal counsel about the applicability of the provisions of law.

That the assessee company's existence and continuity as a going concern was itself in jeopardy, due to lack of funds,

*since the same was in control of the Income Tax Department only, being seized during alleged search and seizure operation, so, the appeal could not be filed on time.*

*4. On examination, I find that the affidavit dated 18/02/2019 for condonation of delay has been filed alongwith the appeal filed on 18/02/2019. The delay has been attributed in the aforesaid application by the appellant to the legal counsel who did not give proper and timely advice about the applicability of the provision of law. It is difficult to accept that a Private Limited Co. which is assisted by professionals could be ignorant of the provision of law. The law helps persons who are vigilant in their rights "(Vigilantibus et, Non Dormientibus, Jura Subveniunt)" The vigilant, and not those who sleep on their rights, are assisted by the law.*

*5. The reasons attributable for the delay in filing of appeal cannot be accepted as sufficient and reasonable and they clearly look to be an afterthought. Merely filing of affidavit of the Director does not constitute sufficient reasons. I find that the delay in filing the appeal was due to negligence and inaction on the part of the appellant and the appellant could have very well avoided the delay by exercising due care and attention.*

*6. Considering the facts and circumstances of the case, I find that the appellant has not been able to give sufficient reasons to explain the inordinate delay of 836 days in filing of appeal. The affidavit of the appellant for condonation of delay is not found to be acceptable. Therefore the appeal filed by the appellant is not found to be maintainable since the appeal filed is submitted beyond the prescribed time limit.*

*7. In view the above facts and circumstances of the case application of the appellant for condonation of delay is hereby rejected.*

*8. Since the appeal is beyond the prescribed time limit, the appeal is hereby dismissed."*

10. It is seen that of the two reasons offered by the Assessee for the delay in filing the appeal, the impugned order has been

passed by considering only the first one, whereas the second reason has been left unaddressed.

11. The ld. CIT(A) has not recorded any finding qua the Assessee's contention that its very existence and continuity as a going concern was in jeopardy since its funds, which were in the form of FDRs to the tune of Rs.7.05 crores, amounting to more than 99% of its liquid funds, were in the control and custody of the Department, denying the assessee, the ability of paying advance tax and/or self-assessment tax, which was the mandatory statutory pre-requisite for enabling filing of Return of Income.

12. Copies of the said request letters for release of FDRs have been appended at APB-1 to 38. In all, these are as many as twenty letters in number. Letters dated 25.10.2013 (APB-27), 10.12.2013 (APB-29), 2.2.2014 (APB-32) and 3.5.2018 (APB-34&35) bear proof of dispatch thereof through Speed Post (APB-27, 29, 32 & 35). Letter dated 24.8.2018 (APB-36-38) bears the stamp (APB-38) of the Office of the PCIT(C), Lucknow.

13. The non-availability/paucity of funds with the assessee, thus, was due to their being under the control and custody of the Department and their being not released inspite of repeated requests by the assessee. The ld. CIT(A) has failed to take this into consideration. It is trite that no assessee would act against their own interest and allow the filing of their appeal to get delayed, in normal circumstances.

14. In view of the above, we hold that there was sufficient cause for the delay of 836 days in the filing of the appeal before the ld. CIT(A). This delay is, accordingly, hereby condoned. The matter is restored to the file of the ld. CIT(A), to be decided on merits in accordance with law, on affording due and adequate opportunity to the assessee, within a period of two months from

the date of receipt of this order. The assessee, no doubt, shall co-operate in the proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee.

I.T.A. No.569/LKW/2019

15. The facts in this appeal, filed by the assessee for assessment year 2014-15, are, mutatis mutandis, exactly similar to those attending ITA No.568/LKW/2019 (supra). Thus, for our discussion in the preceding paragraphs, qua that appeal, the delay of 836 days in this case, incurred in the filing of appeal before the Id. CIT(A) is also condoned. The matter is remitted to the Id. CIT(A) for decision on merits, with similar directions.

16. In the result, both the appeals stand partly allowed, as indicated.

Order pronounced in the open Court on 24/05/2021.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED: 24/05/2021  
JJ:2603

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR