

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 Nos. 1003 to 1006/JP/2019
निर्धारण वर्ष/Assessment Year: 2016-17, 2017-18 & 2018-19
(24Q 4th Qtr. & 3rd Qtr.)

Sub Treasury Officer, Asind, Bhilwara-311301.	बनाम Vs.	D.C.I.T., CPC (TDS), Ghaziabad.
TAN: JDHS10593C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 11/06/2021
उदघोषणा की तारीख / Date of Pronouncement: 11/06/2021

आदेश / ORDER

PER: BENCH

These are the appeals filed by the assessee against the separate orders of the Id. CIT(A), Ajmer all dated 06/05/2019 for the A.YS. 2016-17, 2017-18 & 2018-19 (24Q 4th Qtr. & 3rd Qtr.) respectively.

2. Since, common issues are involved in all these appeals, therefore, all are clubbed and heard together and for the sake of convenience, a common order is being passed.

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

4. As a lead case, we take ITA No. 1003/JP/2019 for the A.Y. 2016-17 (24 Q 4th Qtr.) for deciding these appeals. In this appeal, there is delay of 3 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.

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

"With reference to the above captioned matter, the applicant/appellant most humbly begs to submit the following reasons for your Honours' kind perusal:

- 1. That original appeal documents were filled on date 29/07/2019 with the honorable office.*
- 2. That the delay in filing of Appeal is 3 day.*
- 3. That the delay in filing the appeal was due to the fact that the office is in village and our consultant was situated in Ajmer, so it could not be collected and signed and posted timely hence the filing of the appeal was delayed.*

4. *That the appellant has got sincere desire and willingness to prosecute his appeal and had no intention to delay his ease and is keen to assist the Hon'ble chair in most appropriate and proper manner and there was most reasonable/sufficient cause beyond the control of the appellant which has resulted into delay in submission of appeal, if any.*

5. *The appellant cite judgment in case of in support of his contention:*

(a) Improvement Trust v. Ujagar Singh [2010] 6 SCC 786

(b) Poonja Arcade v. Asstt. CIT [2010] 326 ITR 123/191 Taxman 291 (Kar.)

(c) Vedabai Vijayanatabai Baburao Patil v. Shantaram Baburao Patil [2002] 253 ITR 798/122 Taxman 114 (SC)

In view of the fact that the appeal was filed after the limitation period but the same was due to the reason beyond the control of the appellant/applicant, it is requested that delay in filing the appeal be condoned.

Also the applicant/appellant cited judgment in case of State of Bihar Vs Kamshevar Prasad Singh (AIR 2000 SC 2006) wherein it was ruled that in the matter of condonation of delay, a liberal approach be adopted when such delay can result in a meritorious matter being thrown out and thus defeat the cause of justice.

6. 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 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.**

7. Per contra, the Id. DR submitted that there is a substantial delay of 3 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 submitted that the fact that the assessee is a Government officer and will not make any difference and the test of sufficient and reasonable cause need to be equally satisfied by it. She accordingly opposed condoning the delay in filing the present appeal.

8. 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 3 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 office is in village and the consultant was situated in Ajmer, so it could not be collected and signed and posted timely, hence, the filing of the appeal was delayed

9. 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-serves 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.

10. 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.

11. 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.

12. 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.

13. Now we take ITA No. 1004 to 1006/JP/2019 for the A.Y. 2017-18 & 2018-19 (24Q 4th Qtr. & 3rd Qtr.) respectively. In all these appeals also,

there were delay of 3 days in filing these appeals. The Id AR also filed applications for condoning the delay. The facts and submissions of both the parties are identical to the facts and submissions of ITA No. 1003/JP/2019 for the A.Y. 2016-17 (24Q, 4th Qtr), therefore, our finding given in ITA No. ITA No. 1003/JP/2019 for the A.Y. 2016-17 (24Q, 4th Qtr), shall apply mutatis mutandis in these years also. Accordingly, delay in filing of these appeals are also condoned and the appeals are also admitted for hearing. In these appeals also, the assessee has applied for withdrawal of these appeals 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 these appeals.

14. In the result, all these appeals filed by the assessee are dismissed.

Order pronounced in the open Court on 11/06/2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 11/06/2021
*Ranjan

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

1. अपीलार्थी / The Appellant- Sub Treasury Officer, Bhilwara.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., CPC (TDS), Ghaziabad.
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. 1003 to 1006 /JP/2019}
आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar