

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

Sl. No.	ITA No.	AY	Appellant	Respondent
1 & 2	2197 & 2198/H/2018	2009-10 & 2011-12	Rajan Singh, Hyderabad. PAN - ASTPS 2275G	Income-tax Officer, Ward - 7(2), Hyderabad.
3	617/H/2020	2009-10	Madhu Mathi, Hyderabad. PAN-DBYPM 9808L	-do-
4	742/H/2020	2009-10	Usha Bai, Hyderabad. PAN-AAOPU837IN	-do-
Assessee by:			Shri K.C. Devdas	
Revenue by:			Smt. N. Swapna	
Date of hearing:			07/09/2021	
Date of pronouncement:			08/09/2021	

ORDER

PER L.P. SAHU, A.M.:

All these filed by different assessees are directed against CIT(A) - 3 Hyderabad's separate orders dated 15/02/2021 for AY 2017-18 involving proceedings u/s 143(3) r.w.s. 147 of the Income- Tax Act, 1961; in short "the Act".

2. On perusal of record, we find that there was a delay in filing these appeals by the assesseees before the ITAT, namely, ITA Nos. 2197 & 2198/Hyd/2018 - 1 day delay in each appeal, ITA No. 617/Hyd/2020 - 248 days delay and ITA No. 742/Hyd/2020 - 348 days delay. On perusal of affidavits filed by the assesseees, we find that there were reasonable causes, which prevented them to file the appeals within the stipulated time. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assesseees impugned delays are neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Cases are now taken up for adjudication on merits.

3. The grounds raised in all these appeals are against the action of the CIT(A) in dismissing the appeals by not condoning the delay in filing the appeals before him, except in ITA No. 742/Hyd/2020.

4. In the course of hearing, it was pointed out by the learned counsel of the assessee that the learned CIT(A) had decided the matters ex-parte and dismissed the appeals

without condoning the delays. Therefore, it would be in the interest of justice, the matters may be restored to his file for deciding various grounds of appeals on merits. The learned DR agreed with the aforesaid statement of the learned AR.

5. Considered the rival submissions and perused the material facts on record. By all possibilities, no one can deny that there are delays in filing the appeal. Every person has a right to appeal and specifically in the case of company, which depends in the efficiency of various individuals. In the given case, the junior accountant has not brought to the notice of senior management. One cannot deny the above possibility. Merely because the company is professionally managed, we cannot assure that they cannot make any mistake. There is saying that there is dark under the light. Therefore, in the interest of justice, we restore the matters back to the file of the CIT(A) with a direction to condone the delays in filing these appeals before him and decide various grounds of appeal of the assessee on merits. Accordingly, the CIT(A) is directed to afford reasonable opportunity of being heard to the assesseees and thereafter decide the appeals on merits. Our view is supported by the following judgements:

5.1. The judgement of the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST. Katiju and

others, [1987]167 ITR 471, wherein the Hon'ble Apex Court has held as under:

“3. 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 ends of justice—that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy.

4. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. 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.

3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense and pragmatic manner.*

4. *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.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

6. *It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

5.2. The decision in the case of CIT Vs. K.F. Bioplant (P) Ltd., (Bom) 233 Taxman 74, wherein the Hon'ble Bombay High Court has held as under:

"8. We have considered the application for condonation of delay keeping in mind the following observations of

the Apex Court in State of M.P. v. Pradeep Kumar [2000] 7 SCC 372:

'It is true that the pristine maxim "Vigilantibus Non Dormientiobus Jura Subveniunt (Law assists those who are vigilant and not those who sleep over their rights). But, even a vigilant litigant is prone to commit mistakes. As the aphorism "to err is human" is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of judicature permanently closed before him . . .'

This we counter-balanced by the likely prejudice to the other side on account of condoning the delay. We are of the view that in view of revenue's mistake the delay of 1845 days in taking out the present motion be condoned and we also set aside the order dated 7.11.2009 and restore the Appeal to the file of this Court. However, a mistake on the part of the revenue would have been averted if appropriate care had been taken by them. Thus, the lack of care which led to a mistake of 1845 days cannot be without costs. Therefore, the delay is condoned subject to the Appellant-revenue paying a cost of Rs.20,000/- to the respondent-assessee on or before 30.3.2015. Needless to state the appellant will also remove the office objections on or before 30.3.2015."

6. We direct the assesseees to appear before CIT(A) with all the relevant evidences; at their own risk and responsibilities to be followed by three effective opportunities of hearing.

7. In ITA No. 742/Hyd/2020, the CIT(A) dismissed the appeal on the ground of non appearance by the assessee. In the interest of justice, we restore the matter back to the file of the CIT(A) with a direction to decide the appeal on merits. We direct the assesseees to appear before CIT(A) with all the relevant evidences; at her own risk and responsibilities to be followed by three effective opportunities of hearing.

8. In the result, all the appeals under consideration are treated as allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 8th September, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 8th September, 2021.

kv

Copy to :

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3	<i>Usha Bai, H.No. 2-35/19/1, Durga Nagar, Puppal Guda, Alkapur, Hyderabad - 500 089</i>
4	<i>ITO, Ward - 7(2), Hyderabad</i>
5	<i>CIT(A) - 3, Hyderabad.</i>
6	<i>Pr. CIT - 3, Hyderabad.</i>
7	<i>ITAT, DR, Hyderabad.</i>
8	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	