

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 86/JP/2021  
Assessment Year: 2018-19

Interio Planet, 12, Arihant Plaza, Near Post Office, Dadabari, Kota-324009 (Raj).	बनाम Vs.	CPC, Income Tax or ITO, Kota.
PAN No.: AAFFI 8208 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shravan Kr. Gupta (Adv.)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 15/11/2021  
उद्घोषणा की तारीख / Date of Pronouncement : 25/11/2021

आदेश / ORDER

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

The present appeal has been filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 02/08/2021 for the A.Y. 2018-19. The grounds taken by the assessee in the appeal are reproduced as under:

- "1. The impugned assessment order u/s 143(1) dated 31.05.2019 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.*
- 2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in rejecting the condonation of delay and thereby dismissed the appeal without deciding the Grounds of appeal taken by the assessee, which is against the principal of natural justice. Hence the condonation of delay so rejected or appeal so dismissed by the*

*Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the may kindly be admitted.*

3. ***Rs.1,66,098/-***: *The Id. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining the addition of Rs.1,66,098/- u/s 40(b) on account of remuneration to partners. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.*
4. *The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.*
5. *The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing."*

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, the main grievance of the assessee relates to challenging the action of the NFAC in dismissing the appeal without condoning the delay of 125 days in filing the appeal as well as without discussing the merit of the case.

4. The Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the NFAC and also relied upon the written submissions filed before the Bench and the contents of the same are reproduced as under:

- "1 *That assessee after receiving the order u/s 143(1) dt.31.05.2019 has asked to some person to go in the office of his counsel after 4-5 days (as for some time counsel was not available) and asked to him look in to the matter and to take the necessary action. That the person to whom order was given has forgotten to hand over the papers/orders to the counsel by oversight by one and other reason. However in the 2<sup>nd</sup> week of Nov. 2019 when assessee discussed to his counsel and asked about the matter, then he told that he has not received any order or papers, then he inquired to the person, who replied that he has forget the same and he realized his mistake. That after finding out the order from him, he sent the same to the counsel for necessary action.*
2. *That the counsel of the assessee has advised to him to file the appeal immediate with the prayer for condonation of delay being the reasonable ground and being a strong case in her favour of the assessee. Due to all these valid or true reason the appeal could not be filed within time before the Id. CIT(A). In support of these contention an affidavit of the assessee is enclosed.*
3. *That as before the Id. CIT(A) the grounds of condonation of delay has not been taken properly by the counsel or taken in summary manner as the assessee is not a technical person or does not know the procedure of appeal, condonation or drafting etc. they were depended upon the counsel or on his advice they filed the appeal on the reasons given in form 35. However the counsel has taken the grounds of condonation in their wisdom and to his best knowledge. But the Id. CIT(A) has failed to consider the same in their true perspective and sense and has not found satisfied with the*

*grounds of condonation of delay taken by the assessee/counsel and dismissed the appeal of the assessee only on the grounds of condonation of delay, without further asking to the assessee any or proper reason of condonation of delay.*

*In the case of Mohinder Pal Suthar vs. ITO in 1TA No. 827/CHD/2019 Jun 25, 2021 (2021) 62 CCH 0350 Chd Trib it has been held that Appeals—Condonation of delay—There was delay of 210 days pointed out by Registry in filing of present appeal—Held, Assessee has proceeded on an incorrect advice of a professional and approached Punjab & Haryana High Court for a remedy which was statutorily available under Income Tax Act—These submissions on an affidavit fully supports argument that assessee's action has been bonafide as mistake of acting on incorrect advice is reason for delay in filing of appeal—In peculiar facts and circumstances as they stand, it is not a case where assessee can be said to have carelessly slept over his rights and responsibilities—it is further seen that no undue advantage has been derived by assessee by filing of present appeal late, nor any vested right of Revenue is unsettled by delayed filing of appeal by assessee—Accordingly, accepting explanation of assessee as bonafide and true, delay is condoned—Assessee's ground allowed.*

4. *That in the interest of natural justice the Id. CIT(A) should have considered the condonation in liberal approach and should have given an opportunity to explain the reason in details but he has failed to do so. However now assessee has explained the same in detailed as above before your honor, which may kindly be taken in to consideration by taking a sympathetic view and in the interest of natural justice.*
5. *It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167*

*ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:*

*"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 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."*

*The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.*

*In the case of Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC), the Hon'ble Apex Court has again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court has also held that advancing of substantial justice should be of prime importance.*

6. *The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N.Balakrishnan v. M.Krishna Murthy(1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Another 118 ITR 507 .*

*That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s*

*CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(AII), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.*

7. *The Hon'ble Jaipur Bench of ITAT has also condoned the delay in the case of Ganesh Himalaya Pvt. Ltd. v. ACIT 22 Tax World 415 (Jp) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Holigans, particularly when on the similar points in the earlier four years, the appeals were filed in time.*

*In the instant case also, the appeal could not be filed in time before the Id. CIT(A) because of the above reasonable cause and was a sufficient cause and there was no malafide intention."*

5. On the other hand, the Id DR has opposed the prayer of assessee for condoning the appeal. She has relied on the decision of the ITAT Jaipur Bench in the case of Rajasthan Technical University Vs CIT in ITA No. 541/JP/2019 order dated 11/08/2020.

6. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation of delay. In case of Collector, **Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471**, the Hon'ble Supreme Court has laid

down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come on the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

7. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case, then taking into consideration, the facts of the present case, we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of the case, we condone the delay of 125 days in filing the appeal before the Id. CIT(A) and remand the matter back to the record of

the NFAC/ CIT(A) for deciding the appeal afresh on merits after giving an opportunity of hearing to the assessee. The assessee is also directed to cooperate with the NFAC in deciding the appeal on merits and without any sufficient reason, not to take further adjournments. If the assessee takes adjournment without any sufficient and plausible reason, then the NFAC is at liberty to pass order in accordance with material available on record.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by Ld. CIT(A) independently in accordance with law.

9. In the result, appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 25<sup>th</sup> November, 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:- 25/11/2021

\*Ranjan

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

1. अपीलार्थी / The Appellant- Interio Planet, Kota.
2. प्रत्यर्थी / The Respondent- The CPC/ITO, Kota.
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. 86/JP/2021)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar