

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"H" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER**

ITA.NOs. 96 & 97/MUM/2021 (A.Y: 2002-03)

KNP Securities Pvt. Ltd., Bhupen Chambers, Ground Floor 9, Dalal Street, Fort, Mumbai - 400023 PAN: AAACK4712C	v.	DCIT – Central Circle – 7(1) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Rajiv Khandelwal
Department by	:	Shri Dr. P. Daniel
Date of Hearing	:	05.01.2022
Date of Pronouncement	:	10.03.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. These appeals are filed by the assessee against different order of Learned Commissioner of Income-tax (Appeals)-49, Mumbai [hereinafter for short "Ld. CIT(A)] dated 27.01.2021 for the A.Y. 2002-03 in sustaining the addition u/s. 143(3) of the Act and penalty levied u/s. 271(1)(c) of the Act.

2. Brief facts of the case are that, assessee filed original return of income u/s. 143(3) of the Income-tax Act, 1961 (in short "Act") and the assessment was completed on 24.02.2005 determining the total income of ₹.91,86,220/- as against the returned loss of ₹.6,56,66,030/-. While completing the assessment, the Assessing Officer made the following additions:

a.	Disallowance of interest	₹.7,26,67,345/-
b.	Business promotion`	₹.1,03,578/-
c.	Trevalling & Conveyance	₹.5,31,846/-
d.	Long term capital gain	₹.1,26,29,374/-
e.	Interest not allowed which is not provided in the Books of Accounts	₹.7,35,65,705/-

3. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) confirmed the additions made by the Assessing Officer. Aggrieved with the decision of the Ld.CIT(A) assessee preferred appeal before ITAT. The ITAT after considering submissions of the assessee remitted the issues of disallowance of interest income, interest on unsecured loans and business promotion expenses to the file of the Assessing Officer for fresh consideration. Accordingly, Assessing Officer issued notices u/s. 143(2) and u/s. 142(1) of the Act and served on the assessee. In response Ld. AR of the assessee attended and filed relevant information as called for. After considering the submissions, the Assessing Officer rejected the submissions made by the assessee and confirmed the

disallowance of interest and business promotion expenses as disallowed in original Assessment Order. Aggrieved assessee preferred an appeal before the Ld.CIT(A).

4. Ld.CIT(A) observed in his order that assessee has filed the appeal only on 24.05.2017, there was a delay of 1118 days in filing the appeal. Assessee filed a letter dated 25.05.2017 requesting for condonation of delay. Assessee also filed an affidavit from Shri Dhruv Shah, identified as Vice President (Accounts and Taxation) of NH Group of companies explaining the reasons for delay in filing the appeal. The Ld.CIT(A) issued notice for hearing on several occasions and assessee has taken adjournments. A fresh notice of hearing dated 15.01.2021 was issued thereafter providing assessee an opportunity to file online submissions due to the COVID-19 pandemic. After considering the submissions of the assessee and material available on record Ld.CIT(A) dismissed the appeal considering the fact that the appeal filed by the assessee which has considerable delay and by relying on the decision of the Jt.CIT v. Tractors & Farms Equipments Ltd., [2007] 104 ITD 149 dismissed the appeal filed by the assessee. Aggrieved assessee is in appeal before us.

5. At the time of hearing, Ld. AR submitted that the Assessing Officer completed the assessment on 31.03.2014 and assessee supposed to have file the appeal on 30.04.2014 before the Ld.CIT(A). In order to file the appeal before the Ld.CIT(A) assessee has diligently paid the appeal fee and due to the reasons recorded in the affidavit from Shri Dhruv Shah Vice President, explaining the reasons in detail and he submitted that there is certainly inordinate delay in filing the appeal. However, the assessee has explained the reasons and provided the reasonable cause for not filing the appeal in time. He prayed that for the sake of justice the appeal may be remitted back to the file of the Ld.CIT(A) to adjudicate on merit and the assessee in order to file the appeal in time it has diligently paid the fee, only due to the reasons recorded in the affidavit the appeal was not filed on time, the delay may be condoned and further he submitted that even on merit the issue involved is allowed in the case of assessee's sisters concern. He relied on the case of Collector, Land & Acquisition *v.* Mst. Katiji & Others [(1987) 167 ITR 471(SC)].

6. On the other hand, Ld. DR in case there is a delay of few days the matter may be considered but not for such inordinate delay as per the present case. By relying on the decision in the case of *Vaijyanatabai Baburao Patil v. Shantaram Baburao Patil and Ors.* [(2002) 253 ITR 798

(SC)], he submitted that the Hon'ble Supreme Court distinguished the inordinate delay *v.* few days. Further, Ld. DR submitted that assessee has filed the relevant appeal fee and why it has not filed the appeal on time, the reasons recorded and claimed by the assessee is not proper reason to claim as reasonable cause.

7. With regard to ITA.No. 96/Mum/2021, similar issue of non filing the appeal before the Ld.CIT(A) and there was a delay of 696 days and the issue involved is similar to ITA.No. 97/Mum/2021 and only difference is in the given case the Ld. AR of the assessee has filed the affidavit instead of Shri Dhruv Shah, Vice President. Since the issue involved are similar, we have taken up both the appeal together for adjudication.

8. Considered the rival submissions and material placed on record, we observe that no doubt there is an inordinate delay in the given case. Further, we observe that the issue involved in this appeal is having checkered history and it is the second round of appeal and in the first round of appeal the ITAT has remitted the issue back to the file of the Assessing Officer and Assessing Officer after verifying the issues confirmed the same addition what was made in the original Assessment. Aggrieved assessee diligently filed the appeal fee in order to file the appeal

before the Ld.CIT(A), however, due to some reasons recorded in affidavit that appeal papers along with the payment challan were kept in plastic bag and forgotten to deliver the same in the office of the Chartered Accountants for onward filing on the next day. Due to inadvertent mistake the folder was kept in the cupboard. Assessee came to know only when the Assessing Officer issued arrear notice and then it realized that the appeal for this assessment year was not filed. Accordingly, appeal was filed before the Ld.CIT(A) with the inordinate delay. We noticed that the intention of the assessee to file the appeal, however, due to the negligence it could not file the appeal in time, even though it has paid the respective fees diligently. We noticed that there is certainly inordinate delay, we observe from the decision of the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v/s Mst. Katiji & Others (supra).

"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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay

on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the tad in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the Matter giving rise to the present appeal, we are satisfied that sufficient Cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

9. In the case of Senior Bhosale Estate (HUF) v. ACIT [(2019) 419 ITR 732], the Hon'ble Supreme Court in the case of Condonation of delay of 1754 days held that, if the stand of the Applicant in the Affidavit that he had no knowledge about the passing of the order is not expressly refuted by the Respondent, the question of disbelieving the stand of the Applicant cannot arise. For this reason, indulgence should be shown to the Applicant by condoning the delay

In case of Senior Bhosale Estate (HUF) v. ACIT, the Hon'ble Supreme Court by setting aside the order of the High Court and relegated the parties before the High Court, by allowing the civil application(s) for condonation of 1754 days delay in filing the concerned appeal.

The Appellant(s) in this case pleaded before the court that they had no knowledge about the order passed against them by the ITAT on 29.12.2003 until they were confronted with the auction notices in June 2008 issued by the competent authority. The Appellant(s) filed appeal within prescribed time along with subject applications on 19.07.2019. The respondents did not expressly refute the stand taken by the applicant(s) about the fact that they were not aware about the order issued by ITAT on 29.12.2003.

Hon'ble Supreme Court while allowing the condonation of delay of 1754 days observed that unless fact is not refuted by the respondent(s) the question of disbelieving the stand taken by the Applicant(s) cannot arise thus Hon'ble High Court should have shown leniency to the appellant(s) by condoning the delay in filing the concerned appeal(s).

10. Respectfully following the said decision, we are inclined to accept the reasons recorded in affidavit as reasonable cause to condone the above said delay. Therefore, we are inclined to remit this issue back to the file of the Ld.CIT(A) to decide the issue on merit. Accordingly, appeal filed by the assessee is allowed for statistical purpose.

11. Since the issue involved in other appeal in ITA.No. 96/Mum/2021 are mutatis mutandis, accordingly, this issue is also remitted back to the file of the Ld.CIT(A) to decide the issue on merit.

12. In the result, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced on 10.03.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER
Mumbai / Dated 10/03/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum