

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA Nos.902 & 903/Chny/2020
(निर्धारण वर्ष / Assessment Years: 2011-12)

Shri A. Annadurai No.9, St. Mary's Street, Nehru Ville, Lawspet, Pondicherry – 605 008.	बनाम/ Vs.	ITO Ward-4, Pondicherry.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No.AEJPA-3156-N		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Vasudevan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri G. Johnson (Addl. CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	24-03-2022
घोषणा की तारीख / Date of Pronouncement	:	24-03-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2011-12 arises out of separate orders passed by learned Commissioner of Income Tax (Appeals), Puducherry [CIT(A)] both dated 11-09-2020 in the matter of assessment framed by Ld. Assessing Officer u/s 144 r.w.s.147 of the Act on 28.11.2018 and imposition of penalty u/s 271(1)(c) vide order dated 28.05.2019.

2. Upon perusal of impugned orders, it could be seen that the assessee's appeal have been dismissed for want of condonation of delay of 126 days and 48 days respectively. The appeals have not been adjudicated on merits. The Id. AR submitted that the appeals could not be filed on time due to prolonged illness. The Ld. Sr. DR submitted that each day's delay was to be explained. Having considered rival submissions, our adjudication would be as under.

3. We are of the considered opinion that though the appeals have been filed with a delay before first appellate authority, however, a lenient view was to be taken keeping in view the fact that the assessee is a resident individual and facing adverse medical conditions. Our view is supported by the guiding principles as laid down by Hon'ble Supreme Court in **Collector, Land Acquisition v. Mst. Katiji & Ors. (167 ITR 471)** which are as follows: -

"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. And such a liberal approach is adopted on principle as it is realised 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, 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 malafides. 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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4. Considering the same, we direct Ld. CIT(A) to condone the delay and admit the appeals for adjudication on merits. Thereafter, the appeals may be disposed-off on merits after granting adequate opportunities of hearing to the assessee. The assessee, in turn, is directed to substantiate his case forthwith.

5. Both the appeals stand allowed for statistical purposes.

Order pronounced on 24th March, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखकसदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 24-03-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF