

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI KULDIP SINGH(JUDICIAL MEMBER)
AND
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A No.1996/Mum/2020
(Assessment year: 2013-14)

St. Francis De Sales Church Trust G/2, Kapiketan CHS, Plot No.26 Sector 15, Koperkhairne Navi Mumbai-400 709 PAN : AAGTS3867B	vs	ACIT-9(CPC), Bangalore
APPELLANT		RESPONDENT

Assessee represented by	Shri Mandar Vaidya
Department represented by	Shri B.K. Bagchi

Date of hearing	28/02/2022
Date of pronouncement	28/03/2022

ORDER

Per: Gagan Goyal (AM):

This appeal has been filed by the assessee against the order dated 09/03/2020 passed by the Commissioner of Income-tax (Appeals)-1, Mumbai [hereafter, CITA)] for the assessment year 2013-14.

2. Registry has notified a delay of 216 days in filing the appeal. The appeal has been filed on 10/12/2020 whereas the due date was 08/05/2000. In this context, we find that the Hon'ble Supreme Court in Civil Original Jurisdiction Suo-Motu Writ Petition (Civil) No.3 of 2020 judgment dated March 08, 2021 issued the following directions, due to the onset of COVID-19 pandemic:-

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos(b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting

proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

Respectfully following the aforesaid directions of the Hon'ble Supreme Court, we hereby condone the delay of 216 days in filing the appeal before the Tribunal and proceed to adjudicate the matter.

3. The assessee has taken the following grounds of appeal:
 1. The Ld.CIT (Appeals) erred in declining to condone the delay in filing the appeal.
 2. The Ld.CIT(A) failed to appreciate that, in the facts & circumstances, the assessee-school's claim u/s. 11 ought not to have been disallowed, in an order passed u/s. 143(1)
 3. The Ld.CIT (A) erred in ignoring the merits of the assessee's case. It is submitted that the Assessee was entitled for the

exemption u/s. 11 & 12, by virtue of section 12A (2) r/w the proviso thereto.”

4. Ground No. 1 raised by assessee we are taking and adjudicating as of prime importance in the present matter. Ground Nos. 2 and 3 being on merits of the case will take their on course depending on the outcome of Ground No.1.

“1. The Ld.CIT (Appeals) erred in declining to condone the delay in filing the appeal.

It is clearly emanates from the order of Ld. CIT(A), that no opportunity was being provided to assessee by CPC, Bangalore while processing return u/s. 143(1) of the Income Tax Act, 1961 (Hereinafter referred to as “Act”). About the scope of section 143(1) of the Act, need not discuss here as we are dealing with the matter of condonation of delay and merits has to be decided by the office of Ld. CIT (A).

5. It is submitted by the counsel of assessee before the Ld. CIT (A), “That the delay occurred since the effect of consequences of the intimation under section 143(1) of the Act was not realized immediately, that is to say that it was not clear to the assessee as to what was the nature of the disallowance resulting in a higher demand and the assessed income getting higher than the returned income”.

6. Now we need to understand the nature of intimation u/s. 143(1) of the Act being issued and received by the assessee in due course of their return filing process and consequently processing of the same by the CPC, Bangalore. It's a routine exercise which is being carried out by the CPC, Bangalore and usually in most of the cases returned income is the only figure they process and accept. It rarely happens where they deviate from this usual practice but that is subject to opportunity is being provided to assessee in addition to the power inherit in section 143(1) of the Act to CPC. In the instant case, according to the assessee, it could not realize the effect and consequence of the order passed under section 143(1). This, according to us, is a convincing reason. A section under which only a prima facie arithmetical adjustments can be done, but assessee's entitlement/disentitlement u/s. 11 and 12 can't be settled through section 143(1). As there is no authority to CPC to ask for complete books of accounts and other relevant documents to decide assessee's entitlement/disentitlement u/s. 11 and 12. If assessee did not realise the importance of this order, there is no abnormality into this. Human preponderance about the situation and customs has to be kept in mind.

7. While deciding the issue of condonation of delay it is well settled legal principles that the expression 'sufficient cause' should receive liberal consideration so as to advance the cause of justice may be taken note of for the purpose of reference:"The words "sufficient cause", as appearing in Section 5 of Limitation Act, should receive a liberal construction when the delay is not on

account of any dilatory tactics, want of *bona fides*, deliberate inaction or negligence on the part of the applicant/appellant, in order to advance substantial justice. The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case. The decisive factor in condonation of delay is not the length of delay but sufficiency of a satisfactory explanation.

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8. In *N. Balakrishnan v. M. Krishnamurthy* [1998] 7 SCC 123 the Hon'ble Supreme Court has held that as long as the conduct of the applicant does not, on the whole, warrant to castigate him as an irresponsible litigant, generally, the delay can be condoned. The Hon'ble Supreme Court has observed that during these days when everybody is fully occupied with his avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities and to visit him with drastic consequences. The Hon'ble Supreme Court has reasoned that the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the right of parties but they are meant to see that parties do not resort to dilatory tactics. The Hon'ble Supreme Court has also held that in every case of delay there can be some lapse on the part of the litigant concerned. However, that alone is not

enough to turn down his plea and to shut the door against him. If the explanation does not smack of *malafides* or it is not put forth as part of a dilatory strategy the Court must show utmost consideration to the suitor.

9. We have noted that in the Hon'ble Supreme Court in *B. Madhuri Goudv. B. Damodar Reddy* (2012) 12 SCC 693, by referring various earlier decisions of Superior Courts and held that the following principal must be kept in mind while considering the application for condonation of delay;

- (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate cause of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation.

- (xi) It is to be borne in mind that no one gets away with fraud, is representation or interpolation by taking recourse to the technicalities of law of limitation.
- (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

10. On a perusal of order of Ld.CIT (A) we find that the Ld.CIT (A) dismissed the appeal of the assessee, as un-admitted being not satisfied with the reasons adduced by the assessee for delay of 41 months in filing the appeal. The assessee explained that “It is submitted that the delay occurred since the effect of consequence of the intimation under sub section 1 of section 143 was not realized immediately, that is to say that it was not clear to the assessee as to what was the nature of the disallowance resulting to a higher demand and the assessed income getting higher than the returned income.” Upon hearing the parties, we find that this is a harsh decision as there is no supposition that everybody is the custodian of law, though ignorance of law is not an excuse for any wrong action. But in the instant case, according to the assessee, it could not realize the effect and consequence of the order passed under section 143(1). This, according to us, is a convincing reason.

11. Therefore, without going into the merits of the case, we deem it fit to remit the matter to the file of the Ld.CIT (A) for a fresh consideration. The Ld.CIT (A) is directed to condone the delay of 41 months, admit the appeal and then, adjudicate the matter on merits after providing reasonable opportunity to the assessee.

12. In the result, appeal filed by the assessee is treated as allowed, for statistical purpose.

Order pronounced in the open court on 28th March, 2022.

Sd/-

(KULDEEP SINGH)
JUDICIAL MEMBER
Mumbai, Dt:28th March, 2022
SK

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

/True copy/

Assistant Registrar / Senior Private Secretary
ITAT, Mumbai Benches