

**THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH**

**Before: Shri Pramod Kumar, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

ITA No. 135/Ahd/2020 Assessment Year 2011-12

Rahul M. Vadodariya, 455/2650, G.H.B. B/h, Kabir Chamber, Nr. Kavinagar, Bapunagar, Ahmedabad PAN: AEQPV3400D (Appellant)	Vs	The ITO, Ward-5(3)(5), Ahmedabad (Respondent)
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**Assessee by: Smt. Krishna Patel, A.R.
Revenue by: Shri S.S. Shukla, Sr. D.R.**

Date of hearing : 12-04-2022
Date of pronouncement : 31-05-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ahmedabad in Appeal no. CIT(A)-5/ITO. Wd. 5(3)(5)/10667/2018-19 vide order dated 18/11/2019 passed for the assessment year 2011-12.

2. The assessee has raised following grounds of appeal:-

“1. The learned CIT (A) has dismissed the appeal only on the ground of late filing.

2. The learned CIT (A) has not verified the application of request for condonation of delay.

3. The learned CIT (A) has erred in law as well as on fact by not interpreting the word reasonable and sufficient cause in this regard.

4. The learned CIT (A) has erred in law as well as on fact by applying the case laws which are irrelevant in this case. Some of them are more than 50 years old even though latest judgments are available.

5. The learned CIT (A) has erred in law as well as on fact by dismissing the appeal without verifying and without reading the details of the assessment order which are directly related for the delay in response to the departmental proceedings. The appellant had not gained any undue benefit and there is also no loss to the revenue for this delay.

6. The learned CIT (A) has erred in law as well as on fact by applying the rule of limitation Act, Section 5 which is irrelevant and not applicable under the Income Tax Act, 1961 having specific provision in this regard. The appellant aggrieved by this denial of grant of justice just on the ground of the submission of the appeal papers in specific period. The appellant prays to grant relief by deleting the additions made by the assessing officer fully and oblige.”

3. The brief facts of the case are that the assessee did not file return of income for the impugned year since his income was below the taxable limit. The assessee was a power of attorney holder of his relative Smt. Suryaben Jagdishbhai Patel for the performance of sale of her agriculture land in her absence. The seller Smt. Suryaben J Patel entered into an agreement for sale

of her agriculture land on date 22/11/2008 for a total consideration of Rs. 46,17,000/- and she received a sum of Rs. 30,00,000/- by six separate cheques, which were duly encashed by her. Thereafter, pursuant to her instructions, the assessee received the balance amount of Rs. 16,17,000/- in cash on her behalf (and in her absence) as a power of attorney holder during the course of execution and registration of sale deed in favour of the purchaser Shri Jignesh Nagjibhai Hirpara. The Sub-Registrar, Memnagar, Ahmedabad, sent details of the sale arrangement to the department under the provisions of the Income Tax Act as AIR Information, on the basis of which the Assessing Officer issued notice of reopening assessment to the assessee. The assessee was asked to appear several times, but since he failed to appear, assessment was finalized on ex-parte basis, by treating the sum of Rs. 16,17,000/- as unexplained money of the assessee, u/s 69 of the Act. The Ld. Assessing Officer observed as under while framing assessment order:

“However, regarding the remaining payment of Rs. 16,17,000/- neither it is clear from the sale deed that to whom the payment has been made nor the assessee has come forward to give the details of the same.On going to the registered document of power attorney, it is noticed that the seller i.e. Smt. Suryaben Amrutbhai has given complete authority to the assessee to sale the property and to undertake all the work related to the same.All the above facts go without saying that the assessee must have received the benefit of acting as a power attorney holder. Accordingly, the cash payments made by the purchaser of Rs. 16,17,000/- is nothing but the benefit received by the assessee from the above transaction, which the assessee has not recorded or disclosed to the department.

4. The assessee filed appeal before Ld. CIT(A), however, there was a delay of 67 days in filing appeal. The assessee, during the course of appellate proceedings, filed submissions requesting condonation for delay in which he submitted as below:

“Further, during the course of appellate proceedings, the appellant has submitted as under-

"In this connection I respectfully beg to submit that there was delay in filing of appeal against Ex-Party assessment scrutiny order because of reasonable and sufficient ground of the appellant as under.

The same may be considered judiciously on humanitarian ground in the interest of justice to a common man like the appellant.

1 The appellant had never any taxable income in any of the past assessment year and hence he had never filed any return of income. Because of this reason he had not engaged any income tax advisor with him as no requirement since ever.

2 The appellant had received the notices through other employee of his office much late and a forwarded it to the actual seller of the land for necessary compliance. The seller neither complied the same, nor informed to the appellant any feedback till the passing of the ex party order. The appellant also received the Ex-Party assessment order through another employee. The appellant asked the seller to do the necessary action in this regards again but she did not taken any care of the papers received from the department.

There after the appellant was compelled to search any legal advisor on these matters because he was wrongly trapped between the seller and purchaser as a tax defaulter. He approached to the present

chartered accountants on date 04/03/2019 and he collected some documents and filed the appeal within three days of handing over the papers to the present chartered accountants. The delay is mainly caused due to non co-operation of the actual assessee-named Saryuben J Patel. Moreover, he could not search a proper income tax advisor charging reasobaly affording to him.

The appellatant was only the power of attorney holder only, having no interest in any kind of deal in question hence the question of any malafide intention to file appeal late is not existence.

The Income Tax Act, 1961 has laid down Limitations for the all formalities including the filing of appeal. The intention of the legislature is to monitor the discipline of all procedure and smooth working of the department. The late filing of the appeal is a technical default for the purpose of discipline but judicial authorities have been granted to condone the delay with the intention that justice should not be denied only and only on technical defaults instead of merits. The delay is a question of procedure to be followed and technical hurdles without any malafide intention should not be a base to penalized any assessee, which is also accepted by the various judicial authorities.

7 The burden of tax is wrongly shifted on the head of the appellatant which is the actual burden of another assessee.

8 Moreover, the following issues may kindly be considered before taking any adverse view

1 There is no revenue loss.

2 There is no benefit to the appellatant by late filing of appeal.

3 *The appellant is not actual assessee in default because the income does not pertain to him.*

4 *The appellant is not able to afford any undue tax burden of other person and hence, the revenue will also make unfruitful efforts.*

5 *The appellant will be compelled to save himself and litigations will be prolonged unnecessarily.*

6 *At present the view to minimize the litigations should be also considered in the interest of justice on merits only."*

4.1 The Ld. CIT(A) observed that there was a delay of 67 days in filing the appeal. Ld. CIT(A) however refused to condone delay in filing appeal on the ground that there is no sufficient or reasonable cause which prevented the assessee from filing appeal within the stipulated time. He accordingly dismissed the appeal on account of delay in filing of appeal, without specifically dealing with the merits of the case.

5. The assessee is in appeal before us against the order of Ld. CIT(A), who summarily dismissed assessee's appeal by not condoning the delay in filing the appeal and also did not go into the merits of the case. On going through the order passed by the Ld. CIT(A), we note that while Ld. CIT(A) has relied on various judicial precedents regarding the law relating to condonation of delay, however, he had not specifically dealt with the reasons submitted by the assessee for the delay in filing the appeal, and why in the instant facts delay should not be condoned. The Ld. CIT(A) simply brushed aside the reasons filed by the assessee for delay in filing appeal, by stating that "*the contention of the appellant is very vague and general and doesn't*

hold any merit. It is established law that ignorance of law is not an excuse and no relief can be given on this count. Therefore, delay made in filing appeal does not deserve to be condoned'. The Id. CIT(A) did not specifically point out any mala-fide intention on part of the assessee which could be attributed to the delay in filing the appeal. Ld. CIT(A) did not even discuss specific reason why in the facts of case, delay should not be condoned. Moreover, we also note that even if the application for condonation of delay in filing appeal is rejected, even then the Id. CIT(A) should have passed an order on the merits of the case and should not have summarily dismissed the assessee's appeal on account of 67 days delay in filing appeal, without deciding the appeal on merits.

5.1 The Supreme Court in the case of **Collector, Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072**, analyzed the provisions of law qua limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice—that being the life purpose for the existence of the institution of Courts. **It was further observed that a liberal approach is requires to be adopted on principle as ordinarily a litigant does not stand to benefit by lodging an appeal late. Further 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.** The Apex Court further held that 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. It must be grasped that 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 Supreme Court in **N. Balakrishnan v. M. Krishnamurthy 2008 (228) ELT 162**, while condoning the delay of 883 days in filing an application for setting aside the ex parte decree held "**That the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare.** The primary function of a Court is to adjudicate disputes 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. The object of providing legal remedy is to repair the damage caused by reason of legal injury. **If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor.**"

5.3 In the case of **S.S.M. Ahmed Hussain v. ITO [2017] 85 taxmann.com 351 (Madras)**, the assessee filed an appeal before the Commissioner (Appeals) along with an application for condonation of delay of 175 days. The assessee claimed that delay occurred since he was waiting outcome of penalty order. The Commissioner (Appeals) however refused to condone the delay. The ITAT as later (as also confirmed by the High Court)

held that that the reason stated by the assessee in these cases is that he was waiting for the outcome of the penalty proceedings. Therefore, one has to consider, whether reasonable prudent person would do so. **The inference of such delay has to be drawn on the basis of circumstances available on record and conduct of the assessee. After considering the surrounding circumstances and applying the test of human probabilities, one has to reasonably conclude that the plea of the assessee is genuine. The explanation offered by the assessee for the delay cannot be rejected as false or devoid of merits.** Therefore, this short delay of 175 days is condoned.

5.4 In the case of **Kiran Laxmikant Joshi v. ITO [2004] 3 SOT 822 (AHD.)**, the facts were that the assessee moved an application under section 154, which was disposed of by the Assessing Officer. The appeal against the said order was filed before the Commissioner (Appeals) with a delay of more than 6 months. The assessee explained that the delay was on account of earthquake and ill health of his wife coupled with change of his address due to certain family dispute. The Commissioner (Appeals), however, **rejected the explanation of the assessee on the ground that the reasons were very general in nature and did not explain specifically as to why the delay had occurred.** On second appeal, ITAT held the Courts and the quasi-judicial bodies are empowered to condone the delay if a litigant satisfies the court that there were sufficient reasons for availing the remedy after expiry of the limitation. Such reasoning should be to the satisfaction of the Court. In the instant case, on account of earthquake and ill health of his wife, the assessee had been facing many problems, simultaneously.

According to him, order under section 154 was served upon him at the old address. That communication had also consumed time. **Therefore, the assessee could not gain anything by filing the appeal late. There was no mala fide imputable to the assessee.** The delay in filing the appeal was the result of ill health coupled with the change of his address thrice in a short span. In every case of delay there can be some lapse of the litigant concerned. That alone is not enough to turn down the plea and to shut the doors against him. **If the explanation does not smack of mala fide or it is not put-forth as a part of dilatory strategy, the Courts must show utmost consideration to such litigant. At the most for the inaction or a little negligence, the assessee could be burdened with the cost. But his right of hearing of the appeal on merit ought not to be shut.** Therefore, the delay in filing the appeal before the Commissioner (Appeals) was condoned and the matter restored to the first appellate authority to decide the appeal on merit.

5.5 In the case of **Rameshbhai V. Prajapati v. DCIT [2021] 127 taxmann.com 674 (Ahmedabad - Trib.)**, the Ahmedabad ITAT held that where previous tax consultant of assessee had not attended tax matter satisfactorily and new tax consultant had obtained various documents, and that these circumstances and his ill health caused delay in filing Miscellaneous Application against ex parte order passed on account of non-prosecution, keeping in view of rule 24 of Income-tax Appellate Tribunal, 1963, delay in filing Miscellaneous Application was to be condoned.

5.6 In the case of **Kashmir Road Lines v. DCIT 2021] 123 taxmann.com 5 (Amritsar - Trib.)**, ITAT held that where assessee claimed condonation of delay of 124 days in filing appeal due to reason that appeal papers were prepared and handed over to Assistant of assessee's counsel for filling who failed to do so and ultimately appeal was filed belatedly through another local counsel and such contention was also supported by affidavit of previous counsel, since assessee had demonstrated bona fide reason and sufficient cause for such delay, same was to be condoned.

5.7 In our considered view, the Ld. CIT(A) has not approached the matter judiciously and has dismissed the appeal of the assessee, by rejecting the application for condonation of delay, without assigning any specific reasons why the delay in filing appeal should not be condoned. There is no allegation to the effect that the assessee acted in a mala-fide manner and further, Ld. CIT(A) has not brought anything on record as to how the assessee would stand to gain by not filing the appeal in time. There is a minor delay of 67 days, for which, in our view, the assessee has given a plausible explanation. In the assessment framed on the assessee, Ld. Assessing Officer has made an addition of 17 lakhs approximately income in the hands of the assessee as undisclosed income, which according to the assessee does not belong to him since he acted as a mere Power of Attorney, on behalf of the Seller, who received the entire payment. The assessee, in our view, should not be precluded an opportunity of hearing on account of a delay of mere 67 days in filing appeal. Even otherwise, as held by ITAT in the case of **Kashmir Road Lines v. DCIT 2021] 123 taxmann.com 5 (Amritsar - Trib.)**, even when the assessee is not interest in pursuing the

appeal, even then the Ld. CIT(A) should dispose of the appeal on merits. Therefore, in view of the above, the delay in filing the appeal before the Commissioner (Appeals) is being condoned and the matter restored to the first appellate authority to decide the appeal on merit after giving due opportunity of hearing to the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 31-05-2022

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 31/05/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद