

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT
AND
SHRI PADMAVATHY S, ACCOUNTANT MEMBER**

IT(IT)A Nos. 554 & 555/Bang/2021
Assessment year : 2009-10

Tata Communication (UK) Ltd., 68, Vintners Place, Upper Thames Street, South Wing, London EC4V3BJ, United Kingdom. PAN: AAHCT 0782C	Vs.	The Joint Commissioner of Income Tax, (Intl. Taxation), Circle 2(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ketan Ved, CA
Respondent by	:	Smt. Priyadarshini Besaganni, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.06.2022
Date of Pronouncement	:	21.06.2022

ORDER

Per Padmavathy S., Accountant Member

These appeals are at the instance of assessee directed against the separate orders of the CIT(Appeals)-12, Bengaluru, both dated 30.08.2021 for the AY 2009-10 with respect to the orders passed by the AO u/s. 271(1)(b) and 271(1)(c) of the Income-tax Act, 1961 [the Act].

2. There was a delay of 140 days each in filing these appeals before the CIT(Appeals). The assessee is a non-resident telecommunication operator having its registered office in London, UK. It was submitted before

the CIT(Appeals) that the assessee company does not have any presence or manpower in India and does not hold PAN in India and was unsure of the legal position as to filing of the appeal. The assessee has not been served with the quantum order passed us/. 147 r.w.s. 144 of the Act dated 26.12.2017. The matter pertains to AY 2009-10 and retrieval of relevant data to represent the matter took time and there was a delay of 140 days in filing both these appeals due to the bonafide hardships stated above.

3. The CIT(Appeals) cited the decisions of the Supreme Court in the case of *Chief Postmaster General and Ors. v. Living Media India Ltd. (2012) 348 ITR 7 (SC)*, *Pundlik Jalam Patil (dead) by LRs v. Ex. Engineer (2008) 17 SCC 488 (SC)*, *Vedabai @ Vaijayantabai Naburao Patil v. Shantaram Baburao Patil, 125 STC 375 (SC)*, *Collector, Land Acquisition v. Mst. Katiji (1987) SC 1353* and other decisions and was of the view that the explanation of the assessee for sufficient cause in the delay was not supported by affidavit and the assessee failed to establish the same before him. He also noted that the delay in the cases decided by the Supreme Court in *Vedabai @ Vaijayantabai Naburao Patil (supra)*, *Collector & Land Acquisition (supra)* there was only a delay of 4 days, whereas in the present case there was an extra-ordinary delay of 140 days. Therefore, the CIT(Appeals) rejected condonation of delay in filing these appeals and dismissed the appeals as inadmissible without going into the merits of the case.

4. Aggrieved, the assessee is in appeals before the Tribunal.

5. We have considered the rival submissions and perused the material on record. The Hon'ble Supreme Court, in the case of *Mst. Katiji (supra)*, has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical

considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. In the case of *Shakuntala Hegde, L/R of R.K. Hegde v. ACIT, ITA No.2785/Bang/2004 for the A.Y. 1993-94*, the Tribunal condoned the delay of about 1331 days in filing the appeal wherein the plea of delay in filing appeal due to advice given by a new counsel was accepted as sufficient. The Hon'ble Karnataka High Court in the case of *CIT v. ISRO Satellite Centre, ITA No. 532/2008 dated 28.10.2011* has condoned the delay of five years in filing appeal before them which was explained due to delay in getting legal advice from its legal advisors and getting approval from Department of Science and PMO. In the aforesaid decision, the Hon'ble Court found that the very liability of the assessee was non-existent and therefore condoned the delay in filing appeal. In condoning the delay in filing the appeals, the expression 'sufficient cause' should receive liberal construction and advancement of substantial justice is of prime importance. Discretion of condoning the delay has to be exercised on the facts of each case.

6. Keeping in mind the aforesaid principles, we find that the explanation of the assessee for delay in filing the appeals put forth before the CIT(Appeals) are bonafide and genuine reasons which constitute 'sufficient cause' for the delay. The number of days of delay cannot be looked in isolation and the reasons or explanation of the assessee for the delay have to be considered in the light of the test of bonafide reasons constituting sufficient cause for the delay in a pragmatic manner. In our opinion, the CIT(Appeals) ought to have condoned the delay in the instant case and adjudicated the appeals on merits. We therefore condone the

delay in filing both the appeals before the CIT(Appeals) and restore the appeals to the CIT(Appeals) for adjudication on merits.

7. In the result, the appeals of the assessee are allowed for statistical purposes.

Pronounced in the open court on this 21st day of June, 2022..

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st June, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.