

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.566/PUN/2018
निर्धारण वर्ष /Assessment Year: 2012-13

Mr.Devidas Dyaneshwar Khandve, S.No.187, Opp.32 room, Lohegaon, Chirikle Colony, Near Water Tank, Pune – 411047. PAN: AKGPK 0229 H	Vs	The Dy.Commissioner of Income Tax, Circle-12, Pune.
Appellant/ Assessee		Respondent/ Revenue

Assessee by	None.
Revenue by	Shri S.P.Walimbe – DR
Date of hearing	28/07/2022
Date of pronouncement	08/08/2022

आदेश/ ORDER

PER DR.DIPAK P.RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income-tax(Appeals), Pune-5's, order dated 10.02.2017 for the Assessment Year 2012-13, involving proceedings under section 271(1)(c) of the Income Tax Act, 1961. The Assessee has raised the following grounds of appeal:

"1. The learned assessing officer & CIT(A)-V erred in law & in levying the penalty proceedings u/s 271(1)(c) of Income Tax act, 1961 and therefore, levied penalty of Rs.65,87,295/- without considering suo moto filing of revised return after the survey action u/s 133A."

2. Brief facts of the case are that the Assessee is a proprietor of M/s.Yesh Developers engaged in selling of plots. The original Return of Income was filed on 06.12.2012 by declaring total income of Rs.6,09,421/-. The case was selected for scrutiny. A survey action under section 133A of the Act was carried out on assessee on 18.01.2013. During the course of survey, the statement of the assessee was recorded and tentative Trading Account was prepared. As per the Tentative Trading Account, the assessee had declared total income at Rs.1,49,17,489/-. Subsequently, the Assessing Officer(AO) levied penalty under section 271(1)(c) of the Act for concealment of income vide penalty order dated 30.09.2015.

3. At the outset of hearing, no one appeared on behalf of the assessee. It is observed that Assessee failed to attend hearings before ITAT on following dates:

1. 07.09.2021;
2. 20.10.2021;
- 3) 29.11.2021
4. 25.05.2021 and
- 5) 28.07.2021.

No adjournment letter filed by the appellant.

4. On the other hand, the ld.DR for the Revenue relied on the orders of Lower Authorities.

5. We have heard ld.DR for the Revenue and gone through the orders of Lower Authorities. Before we go into the merits of the case, fundamentally, it is apparent that this appeal is delayed by more

than 300 days. The appellant filed letter dated 23.03.2018, requesting for condonation of delay. The letter is reproduced as under:

“23/03/2018

To,
The Registrar,
Income Tax Appellate Tribunal,
Pune.

Sub:- Condonation for delay u/s 119(2)(b) in case of Devidas Dyaneshwar Khandve (Pan – AKGPK0229H) for AY 2012-13 for filing appeal.

Dear Sir,

Assessee has preferred an appeal u/s 253 against the order passed by Honour before the Income Tax Appellate Tribunal, Appeals, Pune, disputing the penalty proceedings in the appeal. The principal place of Business of assessee was changed due to which assessee did not receive Assessment order by the time. Assessee collected the Assessment order from Income Tax Office for further proceeding. Due to delay in receiving the order assessee was not able to file appeal to ITAT with in time. Kindly condone the delay in filing the appeal due to genuine reason stated above.

We humbly request your honour to consider our appeal. Your full cooperation in this matter will be highly appreciated & oblige.

Thanking You,
Sd/-
Mr. Devidas Dyaneshwar Khandve”

5.1 We make it clear that there is no hard and fast rule which can be laid down in the matter of condonation of delay and Courts should adopt a pragmatic approach and discretion on the facts of each case keeping in mind that in considering the expression ‘sufficient cause’ the principles of advancing substantial justice is of prime importance and the expression ‘sufficient cause’ should receive a liberal construction. A liberal view ought to be taken in terms of delay of

few days. However, when there is inordinate delay, one should be very cautious while condoning the delay. The delay of 303 days cannot be condoned simply because the assessee's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be proved beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence whatsoever. Where no negligence, nor inaction, or want of bona fides can be imputed to the assessee a liberal construction of the provisions has to be made in order to advance substantial justice. In the present case, the reasons advanced by the assessee do not show any good and sufficient reason to condone the delays. The letter requesting condonation speaks about delay in receiving assessment order due to change of address. The said letter doesn't speak anything about Id.CIT(A)'s order. As per Form 36 filed by the appellant assessee, the order of Id.CIT(A) was received on 30.03.2017. Assessee failed to explain how change of address caused delay in filing appeal that to of more than 300 days. The delays are not properly explained by the assessee. There is no reason for condoning such delay in this case. The delay is nothing but negligence and inaction of the assessee which could have been very well avoided by the exercise of due care and attention. In view of our discussion above, we decline to condone the delay of 303 days, accordingly, the delay is not condoned. Since the application

