

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
**Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. No.683/Chny/2020
निर्धारण वर्ष/Assessment Year: 2012-13

Smt. Srinivasan Arthi,
9 & 10, Madha Koil First Cross Street,
Neelankarai, Chennai 600 041.

Vs. The Income Tax Officer,
Non Corporate Ward 15(1),
Chennai.

[PAN:BLJPA4271N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mrs. T V Muthu Abirami, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 14.09.2022
घोषणा की तारीख /Date of Pronouncement : 14.09.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai, dated 28.12.2018 relevant to the assessment year 2012-13.

2. The appeal filed by the assessee was delayed by 498 days in filing the appeal before the Tribunal including 120 days delay owing to Covid-19. The assessee has filed a petition for condonation of delay in the form of an affidavit by stating as under:

- “3. *That I am an uneducated person and I have only passed 12th standard and I am a college drop-out. I got married at the age of 18 against my parents' wishes and remained largely without any contact with my parents and siblings. My son is a special child, who needs my attention at all times.*
4. *That when I received notices from the Assessing Officer, I was panicking as the issue pertains to the immoveable property belonging to my father's partnership firm. Since I was not in talking terms with my parents, my matrimonial home never liked any dispute or legal issue concerning my parents or their business. Therefore, without the knowledge of my matrimonial home, I approached my uncle (chithappa) Mr. Prabhu, who is an advocate practicing in Madurai. He introduced me to one Mr.Sakthi Kumar (phone number 9886273836 and 9047043536), whom, I was informed is an auditor, to conduct my case. Mr. Sakthi Kumar also happens to be my distant relative. My uncle also informed me that since Mr. Sakthi Kumar is a distant relative, I can entrust the case with him. Guided by my uncle's words, I had approached Mr.Sakthi Kumar and handed over my case to him. Mr. Sakthi Kumar further introduced me to one Mr.Puratchi Vendan (phone number 9840120692), whom I was informed is an auditor. I was further informed by Mr. Sakthi Kumar that Mr. Sakthi Kumar and Mr. Puratchi Vendan are partners and that both would jointly handle the case and that I can reach out to either of them. Mr. Sakthi Kumar also told me that any notice / letter that I receive from the income tax department can be sent to him through post /courier or that he would send any of his staff for collecting the same from my home and that I need not visit his office for discussion and that any discussion can be had over a phone call. Mr. Sakthi Kumar extended this help, considering my predicament in the instant case. Whenever any notice / letter was received from the Income Tax Department, I handed over the same to Mr. Sakthi Kumar and Mr. Puratchi Vendan through post / courier / collected by their office staff from my home and I would discuss the same over a phone call.*
5. *That I had pledged my jewellery without the knowledge of my matrimonial home and had paid the fees to Mr. Sakthi Kumar and Mr. Puratchi Vendan.*
6. *That I am not aware whether they are chartered accountants or advocates or just income tax consultants.*
7. *That for the assessment year 2012-13, whenever any notice was received from the Assessing Officer, I duly handed over the same to Mr. Sakthi Kumar and his partner Mr. Puratchi Vendan and they had conducted the case before the Assessing Officer. The Assessing Officer*

had passed the assessment order u/s.143(3) r.w.s.147 dated 21.11.2016 by assessing the total income at Rs.2,29,97,350/- and raising a total demand of Rs.98,07,550/-.

8. *That on receipt of the assessment order, I had entrusted the same to my authorized representatives Mr. Sakthi Kumar and Mr. Puratchi Vendan. They informed me that they would take care of the same.*
9. *That there was a purported delay of 26 days in filing the appeal before the first appellate authority and the Commissioner of Income Tax (Appeals), on 28.12.2018, had dismissed the appeal in limine, without condoning the delay.*
10. *That on receipt of the order passed by the Commissioner of Income Tax (Appeals), I had immediately entrusted the same to my authorized representatives Mr. Sakthi Kumar and Mr. Puratchi Vendan. They informed me that they would take care of the same.*
11. *That I am not aware of the legal procedures and the implications and did not know what has to be done in respect of the order passed by the Commissioner of Income Tax (Appeals).*
12. *That I had entrusted the case to my authorized representatives, whom I completely trusted, but did not guide me as to the next course of action after the dismissal of the appeal preferred before the Commissioner of Income Tax (Appeals). I was of the bonafide belief that whatever I send any notice/ order/ letter from the Income Tax Department to my authorized representative, the same would be taken care by them.*
13. *That I am not even aware whether my authorized representatives attended the hearing of the case posted by the Commissioner of Income Tax (Appeals). I was not aware whether the appeal against the order of the Commissioner of Income Tax (Appeals) was in fact filed before the Hon'ble Income Tax Appellate Tribunal.*
14. *That whenever I forwarded any notice /communication / order / letter received from the Income Tax Department to my authorized representatives, they would say that they would look into the matter and take care of the same.*
15. *That I was not aware of the implications of the order passed by the Commissioner of Income Tax (Appeals) dismissing my appeal.*
16. *That I am not aware of the legal procedures and the implications and did not know what has to be done in respect of the order passed by the Commissioner of Income Tax (Appeals).*

17. *That I was under the bonafide belief that my case would be taken care by my authorized representatives.*
18. *That my son is a special child, who needs my attention at all times and therefore, I believed that my authorized representatives would take care of all the proceedings.*
19. *That believing my authorized representatives, I did not independently apply my mind on the order passed and did not act upon the order, owing to the surrounding circumstances.*
20. *That I received show cause notices on penalty proceedings posting the cases on 07.02.2020, 09.03.2020 and I had forwarded these notices to my authorized representatives, without knowing the implications of these notices.*
21. *That during the second week of March 2020, I received the show cause notice on penalty proceedings posting the case on 16.03.2020 through hand delivery mode.*
22. *That a personnel from the postal department in the Income Tax Office, Nungambakkam, delivered the above stated show cause notice to me.*
23. *That the personnel from the postal department stated that neither I had appeared nor my authorized representative had appeared in response to the show cause notices and therefore the above stated show cause notice was hand delivered to me.*
24. *That I then realized that my authorized representatives did not conduct my case properly.*
25. *That during the third week of March 2020, I met the Assessing Officer in person and the Assessing Officer informed me about the implications of penalty notice and the implications of the order passed by the Commissioner of Income Tax (Appeals).*
26. *That I then understood that no action was taken by the authorized representatives, in respect of the order passed by the Commissioner of Income Tax (Appeals).*
27. *That I requested the Assessing Officer not to pass any adverse order on the show cause notices issued by the Assessing Officer.*
28. *That I immediately approached one Smt. P.S. Bharathi, who is a Chartered Accountant, who guided me about the legal processes and*

the implication of the orders and notices that are passed and issued against me by the Income Tax Department.

29. *That I approached Smt. T.V. Muthu Abirami, Advocate along with Smt. P.S. Bharathi, Chartered Accountant and we explained my case to Smt. T.V. Muthu Abirami, Advocate and I sought her opinion on the case.*
30. *That Smt. T.V. Muthu Abirami, Advocate, after going through my file, opined that the order of the Commissioner of Income Tax (Appeals) can be assailed by way of an appeal before the Hon'ble Income Tax Appellate Tribunal.*
31. *That I requested Smt. T. V. Muthu Abirami, Advocate to draft the appeal before the Hon'ble Income Tax Appellate Tribunal against the order passed by the Commissioner of Income Tax (Appeals) and file the same before the Hon'ble Income Tax Appellate Tribunal.*
32. *That Smt. T.V. Muthu Abirami, Advocate prepared the appeal immediately and sent it for my signature on 23.03.2020, so that the same may be filed with no further delay.*
33. *That I received the appeal papers on 24.03.2020 and signed it on the same day.*
34. *That I could not hand over the appeal papers to Smt. T.V. Muthu Abirami, Advocate, owing to Covid-19 and the consequent lock down.*
35. *That when I was able to move around, I immediately handed over the appeal papers to Smt. T.V. Muthu Abirami, Advocate on 21.07.2020 and my appeal was filed on 22.07.2020 with a delay of 498 days (including a delay of 120 days owing to Covid-19).*

3. We have gone through the above affidavit and find that the assessee is having a special child and she has to take care of the special child all the time. The assessee has entrusted the entire work to appeal before the Id. CIT(A) to Mr. Sakthi Kumar and Mr. Pratchi Vendan, both are partners as could be evidence from the copy of the conversation between the assessee and her erstwhile

consultant. It appears from the affidavit filed by the assessee that both have mishandled and not properly represented before the Id. CIT(A) and even not advised properly to file an appeal before the ITAT. When the penalty notice has been issued, the assessee has approached the Assessing Officer and the Assessing Officer, by taking into consideration of the assessee's position, explained the legal consequences and also explained further the steps to be taken. After that the assessee has approached the Chartered Accountant and with the help of him, the assessee has filed the appeal with a delay of 498 days, which includes 120 days owing to Covid-19. Considering the affidavit and taking into consideration of her position as a mother of special child, we are of the considered opinion that there is sufficient cause for the delay in filing the appeal and though the Id. DR has opposed to condone the delay, we hereby condone the delay and admit the appeal for adjudication.

4. In the grounds of appeal, besides challenging confirmation of addition of ₹.2,29,97,350/-, the assessee has also challenged exparte order of the Id. CIT(A). By referring to the affidavit filed by the assessee, wherein, it was explained that the authorized

representatives Mr. Sakthi Kumar and Mr. Puratchi Vendan have mishandled the case, the Id. Counsel for the assessee has submitted that the AR has not filed the petition for condonation of delay of 26 days in filing the appeal before the Id. CIT(A). It was further submission that being unaware of the legal consequences, the assessee was unable to file petition for condonation of delay in filing the appeal before the Id. CIT(A). It was further submission that taking into consideration the pathetic condition of the assessee having special child, the Id. CIT(A) would have communicated the defect of delay in filing the appeal, which would have enabled the assessee to file the petition for condonation of delay before the Id. CIT(A). In view of the above, the Id. Counsel prayed for setting aside the appellate order.

5. On the other hand, the Id. DR relied on the order passed by the Id. CIT(A).

6. We have considered the rival contentions. In this case, the Id. CIT(A) dismissed the appeal of the assessee *in limine* for not filing petition for condonation of delay of 26 days by referring the Hon'ble

Madras High Court decision in the case of Rane Madras Ltd. v. ITO in T.C.A. No. 91371 of 2010 and CMP No. 8351 of 2016 dated 10.06.2016, wherein, the Hon'ble High Court refused to condone the delay of 1649 days. We could not file any reasonableness in the appellate order. Considering the situation of the assessee, being a mother of special child, the Id. CIT(A) would have communicated the defect of delay in filing the appeal, and called for the assessee to file petition for condonation of delay. On perusal of the affidavit, we find that both the authorized representatives who are represented the assessee has not taken proper care and therefore, the assessee was not aware of the legal consequences. Under these facts and circumstances, we are of the considered opinion that the delay of 26 days in filing the appeal has to be condoned. Since the delay has to be condoned by the Id. CIT(A), we direct the Id. CIT(A) to consider the case of the assessee, who has to take care of her special child. We also direct the assessee to file condonation petition for the delay before the Id. CIT(A) and appear before the Id. CIT(A). In view of the above, the order passed by the Id. CIT(A) is set aside and remit the matter back to the file of the Id. CIT(A) to adjudicate the appeal on

merits after condoning the delay.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 14th September, 2022
at Chennai.

(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 14.09.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy 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.