

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **170 & 171/CHNY/2021**

निर्धारण वर्ष/Assessment Year: 2008 - 09

&

आयकर अपील सं./ITA Nos.: **172 & 173 /CHNY/2021**

निर्धारण वर्ष/Assessment Year: 2009-10

M/s. Sun Combine,
64, Balasundaram Road,
Near RTO Office,
Coimbatore - 641 018.

The DCIT,
vs. Central Circle-1,
Coimbatore.

PAN: AAEFS 6892A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri A. Arjun Raj, CA
: Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 20.09.2022

घोषणा की तारीख/Date of Pronouncement

: 20.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

Out of these four appeals by the assessee, two appeals in ITA Nos.170 & 172/CHNY/2021 are against the orders of Commissioner of Income Tax (Appeals)-19, Chennai in ITA Nos.301 & 302/19-20 both dated 23.02.2021 confirming the quantum addition made by the Assessing Officer and two appeals in ITA Nos.171 &

173/CHNY/2021 are against the orders of Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.303 & 304/19-20 both orders dated 23.02.2021 confirming the levy of penalty by the AO. The assessments were framed by ACIT, Central Circle-1, Coimbatore for the assessment years 2008-09 & 2009-10 u/s.153A r.w.s. 143(3) & 143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 30.11.2010. For these two orders, in two appeals, the penalty under dispute was levied by the DCIT, Central Circle-1, Coimbatore u/s 271AAA of the Act for the assessment years 2008-09 & 2009-10 vide orders of even date 19.05.2011.

2. First, we will deal with the issue of condonation of delay filed before us in these four appeals. It is noticed that these appeals are barred by limitation by 31 days. The order of CIT(A), in these four appeals are dated 23.02.2021 and as per Form No.36, the orders were received by assessee on 08.03.2021. The appeals were filed before Tribunal on 07.06.2021 thereby there is a delay of 31 days in all these four appeals. The Ld.AR for the assessee stated that the delay was due to Covid-19 pandemic and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have

condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. In term of the directions of Hon'ble Supreme Court, we condone the delay in filing of these appeals by assessee and admit the appeals for adjudication.

ITA No.170 & 172/CHNY/2021

3. At the outset, the Id.AR for the assessee stated that the CIT(A) has dismissed these two appeals in quantum addition without admitting the appeals because the appeals before CIT(A) were delayed by almost 153 days. The assessee before CIT(A) in quantum appeals filed reason for condonation of delay, as noted in the CIT(A) orders reads as under:-

1. The assessment order was passed on 30.11.2010 and the same was received in the first week of December 2010 (Date not noted).
2. The appeal should have been filed before the 1 week of January, 2011.
3. The entire Income-tax work for more than a decade was entrusted with our auditor Shri P. Suresh, FCA, Chartered Accountant who has omitted to advise us for filing the appeal.
4. Subsequently, when there was enquiry from the Department on 18.05.2011 about any appeal filed, we come to know the omission on our part. We have also received orders levying huge penalty u/s 271 AAA on 20.05.2011.
5. We have handed over the orders to Shri A. Arjunraj, FCA, on 27.05.2011 and the appeal is filed.
6. Thus, there is a delay of about 5 months in presenting the appeal which is purely because of the mistake of our erstwhile counsel.

7. There is no willful default or any contumacious disregard of an obligation cast on us.

In the circumstances, it is requested to condone the delay of about 5 months in presenting the appeal and admit the appeal petition and render justice.

3.1 We noted that the CIT(A) has not admitted the appeals on account of delay and dismissed the appeals by observing in para 7 as under:-

7. I have bestowed my attention to the appeal filed by the appellant. Before dwelling on the merits of the appeal, it is imperative to decide on the appellant's prayer of seeking condonation of the delay in filing the present appeal. I have gone through the petition for condonation of delay in filing the appeal. The appellant has filed the present appeal on 03-06-2011. The order has been passed on 30-11-2010. The appellant has stated that the said assessment order was received in the first week of December, 2010 and is not mentioning the date of receipt. Thus, the present appeal has been filed late by at least five months. The delay is not ordinary or common. The appellant, in the petition for condonation of delay, has simply mentioned that the delay was on account of change of authorized representative. This reason does not constitute sufficient cause as it is appellant's responsibility to be vigilant and pursue his tax case. It is further pertinent to note that the authorized representative filed reply on 31-01-2011 in the penalty proceedings u/s 271 AAA wherein the appellant had submitted that the cash seized was offered under 'other sources' with a view to buying peace with the Department. Thus, it can be reasonably safely inferred that the decision of not filing is a conscious decision wherein the appellant has deliberately foregone his right to file the appeals. To choose or not to choose to litigate is the prerogative of the appellant but both are not available to him. It is not as if the law provides an open window to allow anybody to litigate as and when it is convenient. Here the recent Judgment in the case of Catholic Syrian Bank Ltd. Vs DCIT (TDS) (ITAT Cochin) Appeal Number: 1.T.A. Nos. 341 to 345/Coch/2018, (Date of Judgment/Order 08/10/2018) has pointed out the relevance of time limitation in such matters as follows:

"This submission ignores the fact that the object of the law of limitation is to bring certainty and finality to litigation. This is based on the Maxim "interest reipublicae sit finis litium i.e. for the general benefit of the community at large, because the object is

every legal remedy must be alive for a legislatively fixed period of time. The object is to get on with life, if you have failed to file an appeal within the period provided by the Statute. It is for the general benefit of the entire community so as to ensure that stale and old matters are not agitated and the party who is aggrieved by an order can expeditiously move higher forum to challenge the same, if he is aggrieved by it. As observed by the Apex Court in many cases, the law assist those who are vigilant and not those who sleep over their rights as found in the Maxim "Vigilantibus Non Dormientibus Jura Subveniunt". In our opinion, merely because the assessee is not vigilant, it cannot follow that the assessee is bestowed with a right to the delay being condoned. We are conscious of the fact that the period of limitation should not come as an hindrance to do substantial justice between the parties. However, at the same time, a party cannot sleep over its right ignoring the statute of limitation and without giving sufficient and reasonable explanation for the delay, except its appeal to be entertained merely because the assessee is a Bank. Appeals filed beyond a period of limitation have been entertained by us where the delay has been sufficiently explained such as in cases of bonafide mistake. Thus the assessee should be well aware of the statutory provisions and the period of limitation and should pursue its remedies diligently. It cannot expect their appeals be entertained because they are after all the assessee, notwithstanding the fact that delay is not sufficiently explained. Hence, the delay is not condoned and the appeals are unadmitted."

Further, it would be worthwhile to refer to the decision of the Hon'ble Supreme Court in the case of *Ajit Singh Thakur Singh v. State of Gujarat* AIR 1981 SC 733, 735, wherein the Hon'ble Supreme Court has made following important observations

"It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or Circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that

the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation."

7.1.1 I am, on perusal of the appellant's pleading on condoning the delay in filing the present appeal, of the view that the appellant has not explained that it had sufficient cause that prevented the appellant from filing the appeal within the stipulated time. This inference is fortified by the above decision of the Hon'ble Apex Court and that of the Hon'ble jurisdictional Tribunal in the case of Sri Venkatesa Paper & Boards Ltd Vs Deputy Commissioner of Income-tax, Salary Circle-I, Coimbatore [2006] 98 ITD 200 (CHENNAI).

7.2 In view of the discussion, I am of the view that the appellant fails on first step of not filing the appeals in time; and that the appellant has not satisfactorily explained that it had sufficient cause for not presenting it within the stipulated period enunciated in sec.249(2) of the Act. Hence, I hold that the delay is inexplicable and hence, cannot be condoned. Thus, the appeal is not admitted in terms of provisions of sec. 249(3) of the Act.

Aggrieved, now assessee is in appeal before the Tribunal.

4. Before us, the Id.AR stated that the CIT(A) has not given any opportunity on condonation of delay as the appeals were filed before CIT(A) with condonation petition for delay of 153 days. The Id.AR stated that the cause was reasonable that the assessee's counsel Shri P.Suresh, FCA has not advised filing of appeal but when enquiry was made from the Department on 18.05.2011, the assessee came to know that appeals were not filed and omission was on their part. This came to knowledge only when they received orders levying penalty u/s.271AAA of the Act on 20.05.2011. Accordingly, these appeals were filed on change of counsel and Shri A. Arjun Raj, FCA

filed appeals on 03.06.2021 as against papers handed over to the changed counsel on 27.05.2011. The Id.AR stated that huge demand is created by the AO and these are search matters, the assessee cannot afford not to file appeal but the mistake is on the part of the assessee's earlier erstwhile counsel Shri P.Suresh, FCA who omitted filing of appeal.

4.1 When these facts were confronted to Id. Senior DR, he contested the condonation of delay but on factual aspect, he could not controvert.

5. In regard to these quantum appeals, we are of the view that cause shown by assessee in condonation petition seems reasonable, as the assessee was under belief that its erstwhile chartered accountant Shri P. Suresh, FCA might have filled the appeals and delay is of 153 days. Even otherwise go by the Department record, the appeals were filed before CIT(A) on 03.06.2011 and these were decided by CIT(A) only on 23.02.2021, that means the Revenue Department has delayed in taking decision for almost 10 years. This itself indicate that how the Department is relax. In view of the above, we condone the delay before CIT(A) and since there is no adjudication on merits, we remand these two appeals in ITA

Nos.170 & 172/Chny/2021 back to the file of the CIT(A) for fresh adjudication.

ITA Nos.171 & 173/CHNY/2021

6. Coming to penalty appeals, we noted that these penalties are consequential penalties levied u/s.271AAA of the Act and since we have set aside the orders of CIT(A) and remanded the matter back to his file, these penalties are also being set aside for taking a decision after adjudication of quantum appeal. Hence, all these four appeals of assessee are set aside to the file of the CIT(A) and allowed for statistical purpose.

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

Order pronounced in the open court on 20th September, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th September, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |