IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" "A" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.820/Bang/2022
Assessment Year: 2009-10

Shri Virupaxappa Siddappa Udnur No.3130/33-2, 2nd Cross, C Block Gayathri Nagar Bengaluru 560 021 **PAN NO : AASPU0922F**	**Vs.**	ITO Ward 9(2) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Pranav Krishna, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of Hearing	:	27.10.2022
Date of Pronouncement	:	27.10.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against order of CIT(A) dated 29.4.2019.

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

1. *"The Order of the learned Commissioner of Income Tax [Appeals] -2, Bengaluru passed under Section 250 of the Act dated 29/04/2019 in so far as it is against the Appellant, is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*

2. *The Appellant denies himself liable to be assessed on a total income of Rs. 12,86,500/- as determined by the learned assessing officer and confirmed by the learned Commissioner of Income Tax [Appeals] as against the*

correct income of 1,60,180/ - declared by the Appellant under the facts and circumstances of the case.

3. *The learned Commissioner of Income Tax [Appeals] erred in confirming the addition of cash deposits made in the bank account of the Appellant amounting to Rs. 11,26,320/- as income from undisclosed sources on the facts and circumstances of the case.*

4. *The learned Commissioner of Income Tax [Appeals] failed to appreciate that the source for cash deposits made in the bank account of the Appellant amounting to Rs. 11,26,320/ - were from loans and money received by his brother on the facts and circumstances of the case.*

5. *Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies himself liable to be charged to interest under Section 234D of the Income Tax Act on the facts and circumstances of the case. Further the levy of interest under Section 234D of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.*

6. *The Appellant craves leave of this Hon'ble Income Tax Appellate Tribunal to add, alter, delete or substitute any or all of the above grounds as may be necessary at the time of hearing of the appeal.*

7. *For the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice.*

3. There was a delay of 1173 days in filing the appeal before this Tribunal. Out of this, 715 days was the delay during Covid Period i.e. from 15.3.2020 to 28.2.2022, which needs to be excluded in view of the decision of Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Moto WP No.(C) No.3 of 2020 in Re: Cognizance of Limitation dated 10.1.2022. Thus, there was an actual delay of 458

days in filing the appeal before this Tribunal. The assessee has explained this delay by way of affidavit stating that the assessee has handed over the appeal paper to one CA namely Smt. Anuradha Suresh Bole who failed to take proper steps to file the appeal before this Tribunal due to certain disturbance and issues in her family, she was unable to devote her complete time towards practice and hence, she was unable to draft the appeal against the impugned order u/s 250 of the Act and file the same before this Tribunal in time. Later, the assessee approached present Counsel, who has filed the appeal before this Tribunal on 13.9.2022, thus, causing effective delay of 458 days in filing the appeal before this Tribunal. The assessee has also filed confirmation letter from the earlier CA stating that it was her failure to take appropriate steps to file the appeal before this Tribunal.

3.1 The Ld. D.R. submitted that there was inordinate delay in filing the appeal before this Tribunal and the same may not be admitted. For this purpose, he relied on the order of the coordinate bench in the case of Smt. Rajalakshmi Vettrivel in ITA Nos.1106 to 1111/Bang/2017 dated 31.8.2017, wherein held as under:-

> *"6. I have considered the rival submissions and perused the orders of the lower authorities impugned in these appeals. As far as the delay' in filing these appeals by 744 days against the common appellate order of the CIT(A), viz. ITA No. 76 to 81/09-10 dated 19.02.2015 is concerned, one has to admit that the delay involved is inordinate and not marginal.*
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> *6.1 It is settled position of law that it is only marginal delays that can be condoned, and not inordinate delays running into several years. We may at this juncture, refer to the Third Member decision of Tribunal (Chennai) in the case of Jt. CIT v/s. Tractors & Farms Ltd. (104 ITD 149)-TM, wherein drawing out a distinction between normal delay and inordinate delay, it has been observed, vide head-note on page 150 of the Reports (104 ITD) as follows-*

"A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case, the consideration of prejudice to the other side will be a relevant factor, so the case calls for more cautious approach, in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case, keeping in mind that in considering the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance."

7. That being so, the case-law relied before us by the learned counsel for the assessee has no application to the facts of the present case. Further I 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 744cannot 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. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The Supreme Court in the case of Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361 has held that the cause for the delay in filing the appeal which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of the limitation provision. 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. Seekers of justice must come with clean hands. In the present case. the reasons advanced by the assessee do not show any good and sufficient reason to condone the delays. 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. Though the assessee has said that the divorce proceedings initiated by her spouse were the reason for delay in filing these appeals, there is no iota of evidence of such proceedings before

any Court. Hence, there exists no sufficient or good reason for condoning inordinate delays of more than 744 days in filing appeal before us. Accordingly, these appeals are dismissed as barred by limitation.

8. I accordingly decline to condone the delay of 744 days, and dismiss these six appeals of the assessee as barred by limitation".

3.2 There was good and sufficient reason in filing the appeal belatedly before this Tribunal and the delay was due to failure on the part of CA to take steps to file the appeal. The delay cannot be attributable to the assessee and it is due to the failure on the part of the earlier CA of the assessee. Accordingly, I condone the delay by placing reliance on the order of the Tribunal in the case of Midas Polymer Compounds Pvt. Ltd. in ITA No.288/Coch/2017 dated 25.6.2018, wherein it was held as under:-

"*6. We have heard the rival submissions and perused the record. There was a delay of 2819 days in filing the appeal before the Tribunal. The assessee has stated the reasons in the condonation petition accompanied by an affidavit which has been cited in the earlier para. The assessee filed an affidavit explaining the reasons and prayed for condonation of delay. The reason stated by the assessee is due to inadvertent omission on the part of Shri Unnikrishnan Nair N, CA in taking appropriate action to file the appeal. He had a mistaken belief that the appeal for this year was filed by the assessee as there was separate Counsel to take steps to file this appeal before the ITAT. Therefore, we have to consider whether the Counsel's failure is sufficient cause for condoning the delay. The Madras High Court considered an identical issue in the case of Sreenivas Charitable Trust v. Dy. CIT (280 ITR 357) and held that mixing up of papers with other papers are sufficient cause for not filing the appeal in time. The Madras High Court further observed that the expression "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.*

6.1 On merit the issue is in favour of the assessee. But there is a technical defect in the appeal since the appeal was not filed within the period of limitation. The assessee filed an affidavit saying that the appeal was not filed because of the Counsel's inability to file the appeal. The Revenue has not filed any counter-affidavit to deny the allegation made by the assessee. While considering a similar issue the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late (2) Refusing to condone delay can result in a meritorious matter being thrown 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.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the 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.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

6.2 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of nondeliberate delay. In the case on our hand, the issue on merit regarding allowability of deduction u/s. 80IB of the Act was covered in favour of the assessee by the binding Judgment of the jurisdictional High Court. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the appeal was not filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the Tribunal is capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalising an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorised by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalise an illegal and unconstitutional order passed by the lower authority. Therefore, in our opinion, by preferring the substantial justice, the delay of 2819 days has to be condoned."

3.3 Accordingly, the delay is condoned and the appeal is admitted for adjudication.

4. On merit, assessee filed following additional evidences along with petition for admission of the same as below:-

Sl.No.	Particulars	Page No. of Paper book	
1.	Annexure 1: Cash Book/Analysis for the financial year 2008-09	06	12
2.	Annexure 2 : List of cash sources for the financial year 2008-09	13	14
3.	Annexure 3: ICICI Credit card statement for Credit card ending 1009 for the period 21.9.2009 to 20.10.2009	15	16
4.	Annexure 4: HDFC Security Loan Sanction letter	17	20
5.	Annexure 5: Syndicate Bank Statement of the appellant for the period from 1.4.2008 to 31.3.2009	21	26
6.	Annexure 6: Housing Loan sanction letter of Syndicate Bank dated 27.2.2007 for loan amount of Rs.19.40 lakhs	27	29
7.	Annexure 7: Rental Agreement dated 1.5.2008 executed between the appellant and Mr. Ravikumar	30	32
8.	Annexure 8: Receipt of Gold loan obtained from Manappuram Finance Limited dated 20.5.2009	33	34
9.	Annexure 9: Rental Agreement dated 2.67.2008 executed between the appellant's wife and Mr. Nagaraj S.	35	37
10.	Annexure 10: ICICI Bank Personal loan statement of the Appellant	38	40
11.	Annexure 11: Passbook of Rajajinagar Pattina Sahakara Sangh Niyamit for loan obtained of Rs.50,000	41	44
12.	Annexure 12: Passbook of Saleshwar Co-op Credit Society Limited, Guledgudd for loan obtained of Rs.3,00,000/-	45	48
13.	Annexure 13: Passbook of Margadarshi Chits (Karnataka) Private Limited for the value of Rs.5,00,000/-	49	56
14.	Annexure 14: SBI Credit card statement of the appellant for the credit card ending 1820 dated 7.3.2009	57	58

15.	Annexure 15: Pawn broker receipt dated 9.2.2009 for principal loan of Rs.15,000/-	59	60
16.	Annexure 17: Income Tax Return Acknowledgement of Mrs. Lalitha V. Udnur for the AY 2009-10 along with copy of the balance sheet, Profit & loss account as on 31.3.2009	70	75
17.	Annexure 18: ABN Bank statement of the appellant for the period 1.4.2008 to 31.3.2009	76	78
18.	Annexure 19: Union Bank Statement of the Appellant for the period 1.4.2008 to 31.3.2009	79	80
19.	Annexure 20: HDFC Bank statement of the appellant for the period 1.4.2009 to 31.3.2009	81	95
20.	Annexure 21: ICICI Bank statement of the appellant for the period for the period 1.4.2009 to 31.3.2009	96	107

4.1. The Ld. A.R. prayed that these additional evidences are very important to decide the issue in dispute and facts relating to the issue already on record and these additional evidences may be admitted in the interest of justice.

5. The Ld. D.R. strongly opposed the admission of additional evidences and submitted that assessee is very negligent in producing these documents before the lower authorities and these documents shall not be admitted.

6. I heard the rival submissions and perused the materials available on record. In my opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above ground. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) I inclined to admit the additional evidences for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

6.1 After admitting the additional evidences, I am of the opinion that these additional evidences are very crucial to decide the issue in dispute and these were not made available to the AO or Ld. CIT(A) on earlier occasion. Being so, in the interest of justice, I remit the entire issue in dispute to the file of AO for reconsideration.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 27th Oct, 2022

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 27th Oct, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.