

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.952/Del/2020
Assessment Year: 2015-16

AVG Impex Pvt. Ltd.,
301, Commercial Complex,
Plot No.20, Shivam Tower,
Paschim Vihar,
New Delhi.

Vs. ITO,
Ward-1(1),
New Delhi.

PAN: AABCA8847M

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	01.11.2022
Date of Pronouncement	:	02.11.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 17.06.2019 of the CIT(A)-1, New Delhi, relating to Assessment Year 2015-16.

2. The application of the assessee to transfer the appeal to SMC Bench was not allowed and it was directed to continue the hearing of the appeal before the Division Bench. On perusal of the record, we find that this appeal can be

disposed of in absence of the assessee after hearing the argument of the Id. Sr. DR. Therefore, we proceeded to adjudicate the appeal.

Ground No.1 of the assessee.

3. Apropos ground No.1, it has been contended by the appellant that the Id.CIT(A)-I, New Delhi, has erred in dismissing the appeal as time barred irrespective of the fact that an application for condonation of delay was filed. The Id. Sr. DR submitted that there was a delay of 87 days in filing the appeal before the Id.CIT(A) and, therefore, the Id.CIT(A) dismissed the appeal on account of failure of the assessee to substantiate the sufficient cause for the delay of 87 days. However, in all fairness, the Id. Sr. DR submitted that if it is found just and proper, then, the Department has no objection if the matter is restored to the file of the CIT(A) for adjudicating the appeal on merits.

4. On careful consideration of the submissions and on perusal of the relevant appeal record including the first appellate order, we note that undisputedly, the assessment order u/s 143(3) of the Act was served on the assessee on 06.02.2018, but, the appeal has been filed on 31.05.2018 after a delay of 87 days. In form No.35, the assessee explained the cause of delay by stating that the Accountant of the company was on leave and he forgot to give the order to the counsel/advocate on time and the directors/management was not aware of the factum of limitation. From the first appellate order, we observe that the Id.CIT(A), after mentioning some judgements noted that the appellate authority has to examine whether

sufficient cause has been shown by the assessee for condoning the delay and whether such cause is acceptable or not. Thereafter, in para 13, the Id.CIT(A) jumped to the conclusion that the appellant was negligent in taking necessary step for filing the appeal within the time prescribed by the statute. We are unable to see any endeavour or effort by the Id.CIT(A) to ask the assessee for the explanation and for the basis of seeking condonation of delay. This is not a justified and reasonable approach of a quasi judicial tax authority. In our considered opinion, the delay of 87 days in filing the appeal before the Id.CIT(A) has been explained by the assessee supported by a sufficient cause as noted above. In a case where the Id.CIT(A) was not satisfied with the explanation and cause shown by the assessee, then, he was duty bound to ask the assessee to show cause as to why its prayer for condonation of delay should be accepted, but, no such effort has been made by the Id.CIT(A) in this regard.

5. The Hon'ble Supreme Court in the case of *Collector Land Acquisition, Anantnag & Anr. vs Mst. Katiji & Ors*, judgement dated 19 February, 1987, reported in 1987 AIR 1353 has held thus:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

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 out at the very threshold and cause of justice being defeated. As against this when delay is con- doned 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 common sense pragmatic manner.*
 4. *When substantial justice and technical considerations are pitted against each other, 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 judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*
6. In view of the above, we are satisfied that the assessee, by way of sufficient cause has successfully demonstrated and established a bona fide and sufficient cause for the delay of 87 days in filing the appeal before the CIT(A). The judgment of the Hon'ble Supreme Court in the case of *Vedabai Alias V.B.Patil Vs. SB. Patil & Others (2007) 253 ITR 798 (SC)* also stresses upon condonation of delay only in the event of sufficient cause explaining the delay. Therefore, in our considered opinion, the Id.CIT(A) was not right in denying condonation of delay of 87 days in filing the appeal before him to the assessee. Therefore, the delay by the assessee of 87 days in filing the appeal before the

ld.CIT(A) is condoned and the matter is restored to the file of the ld.CIT(A) for adjudicating afresh on merits.

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

Order pronounced in the open court on 02.11.2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 02nd November, 2022.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi