

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

BEFORE

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.430/Hyd/2022		
Assessment Year: 2017-18		
Srisaila Kshetra Yogi Vema Reddy Nityannadana Satram, Kurnool, Andhra Pradesh. PAN : AADTS7734G.	Vs.	The Income Tax Officer, Exemption Ward, Tirupati.
(Appellant)		(Respondent)
Assessee by:		Shri GBS Maitreya
Revenue by:		Ms. Reema Yadav.
Date of hearing:		18.01.2023
Date of pronouncement:		18.01.2023

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.11.07.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

“1. On the facts and circumstances of the case, the order passed by the ld.CIT(A) was erroneous and bad in law.

2. The ld.CIT(A) grossly erred in dismissing the appeal only on the basis of delay in filing the appeal filed by the assessee.

3. The ld.CIT(A) erred in making an addition of Rs.44,07,014/- without considering the fact that the society registered u/s 12AA of the Income Tax Act, 1961.

4. The ld.CIT(A) ought to have considered the reasons for delay in filing the appeal.”

3. Facts of the case, in brief, are that the assessee is a Trust, whose main activity is to provide rooms and food to pilgrims and derived receipts. The assessee trust filed its return of income for A.Y.2017-18 on 06.02.2018 declaring total income of Rs. Nil after claiming exemption u/s 10(23C)(iiiab) of the I.T. Act. The case has been selected for scrutiny through CASS to verify Form 10B/10BB not filed and notice u/s 143(2) was issued to the assessee on 17.08.2018 which was duly served. The assessment was completed u/s 143(3) of the Act by determining the taxable income of Rs.44,07,014/- by making by disallowance of exemption claimed u/s 10 of the Act holding that trust is not eligible to claim deduction u/s 10 (23C)(iiiab) of the I.T. Act and Rs.24,90,000/- on account of corpus donation claim u/s 11(1)(d) of the Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before ld.CIT(A), who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

6. The ld. AR for the assessee had drawn our attention to the orders passed by the Assessing Officer and the ld.CIT(A). The ld.AR had submitted that the lower authorities have declined to condone the delay in filing the appeal before the ld.CIT(A). It was submitted that the assessee had instituted the appeal on 03.03.2020 after a period of 38 days. The ld.AR had further submitted that the ld.CIT(A) had issued the notice through e-mail and the assessee after receipt of email had responded to the ld.CIT(A) saying that they are evaluating the possibility of settlement under Vivad se Vishwas and sought time to file the response. The ld.AR further submitted that the notice had been received after the email dt.01.02.2021 fixing the date of hearing. In the said circumstances, ld.CIT(A) had dismissed the appeal on account of delay in filing the appeal.

7. Per contra, the ld.DR had relied upon the orders passed by the lower authorities.

8. I have heard the rival submissions and perused the material on record. Admittedly, the Id.CIT(A) had dismissed the appeal of the assessee as it was instituted by the assessee after a period of 38 days. The assessee in its application for delay had given the plausible reasons for not filing the appeal within a period of 30 days.

9. Under the provisions of the Act, there is a time limit specified under the respective section of the Act for filing the appeal against the finding of the specified authority. However, the provisions of the Act also provides relaxation to the parties, if failed to file the appeal within the stipulated time, if there was the sufficient cause which prevented the assessee/party in doing so. It is the trite law that the Hon'ble Courts time and again in the series of cases have held 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. In this regard, I note that the Hon'ble Madras High Court in the case of Sreenivas Charitable Trust v. Dy. CIT reported in 280 ITR 357 has held that

"3. The Supreme Court in Vedabai v. Shantaram Baburao Patil [2002] 253 ITR 798 held as under: "In exercising discretion under section 5 of the Limitation Act the Courts should adopt a pragmatic approach. 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 a more cautious approach but 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 construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance.

The Calcutta High Court in CIT v. Orissa Concrete & Allied Industries Ltd. [2003] 264 ITR 186 held as under :".

what is really indicated in the various decisions cited and in section 5 of the Limitation Act itself, is that a litigant would be required to explain why the appeal and/or application could not be filed within the period prescribed by limitation and explain the delay for such period for the purpose of linking up the circumstances which had caused the delay during the period of limitation and thereafter."

Similarly, the Allahabad High Court in Ganga Sahai Ram Swarup v. ITAT [2004] 271 ITR 512 has taken the view that liberal view ought to have been taken by the authority as the delay was only of a very short period and the appellant was not going to gain anything from it.

10. Further, it is also important to note that Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji and Ors. (167 ITR 471) laid down certain principles for considering the condonation petition for filing the appeal which 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.”

11. Applying the ratio laid down by the Apex Court as well as various High Courts, I find that the order of the ld.CIT(A) is required to be set aside and the delay in filing the appeal before the ld.CIT(A) is hereby condoned. Having condoned the delay in filing the appeal by the assessee before the ld.CIT(A), I am of the opinion that the ends of justice will be met if the matter may be sent back to the file of ld.CIT(A) with a direction to decide the issue after verifying all the documents / evidence. The above said exercise be carried out after considering the documents available on record and affording the opportunities of hearing to the assessee in accordance with law. The assessee shall be at liberty to file documents, if any, as required for proving its case and the ld.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the ld.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the ld.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee.

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

Order pronounced in the Open Court on 18th January, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 18th January, 2023.

TYNN/sps

Copy to:

S.No	Addresses
1	Srisaila Kshetra Yogi Vema Reddy Nityannadana Satram, Kurnool, Andhra Pradesh.
2	The Income Tax Officer, Exemption Ward, Tirupati.
3	Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order