

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. Nos. 644 to 646/Asr/2019
Assessment Years: 2012-13 to 2014-15

Punjab State Warehousing Corporation, Hoshiarpur [PAN: JLDPO 2255B] (Appellant)	V.	Income Tax Officer, TDS-1, Jalandhar (Respondent)
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Appellant by	None (Written submissions)
Respondent by	Ms. Priyanka Singla, Sr. D.R.

Date of Hearing	: 22.12.2022
Date of Pronouncement	: 31.01.2023

ORDER

Per Dr. M. L. Meena, AM:

This bunch of appeals have been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Jalandhar dated 14.08.2019 in respect of Assessment Years 2012-13 to 2014-15.

2. The assessee has raised the identical grounds in all the appeals:

- “1. That the learned CIT(A) failed to appreciate the facts of that there was a sufficient cause for delay in filing the appeal before him from 01.04.2014 to 17.07.2014 and the same may please be condoned and appeal may please be heard on merits.
 2. That the Assessing Officer has legally erred in law and facts for treating the assessee as a person liable to deduct tax at source under section 194C of Income Tax Act, 1961, provisions of section 194C are not applicable on the facts of our case.
 3. That the appellant seeks the permission to alter, amend or delete any of the grounds of appeal.
3. This is second round of appeal. In the first round of appeal, the ITAT has set aside the matter vide appellate order Nos. 494 to 496/Asr/2017 dated 26.03.2019 by observing as under:

“4.11 Hence, on the aforesaid analyzation and respectfully following the dictum of the Hon'ble Apex Court and Hon'ble High Court and the Co-ordinate Bench, we are inclined to hold that delay of 725 days has been occurred in prosecuting the revision petitions in good faith on the basis of assessee's lawyer and therefore reasonably been explained by the assessee and hence, time spent in prosecuting the revision petitions u/s 264 of the Act is liable to be condoned and stands condoned, however, the assessee shall have to explain the delay from 1st May, 2014 to 17 July 2014 which is caused for filing the appeal u/s 249 of the Act before the Ld. CIT(A).”

4. The Id. CIT(A) has dismissed the subject appeals even in the 2nd round by rejecting the appellant's condonation petitions whereby he has noted that the assessee has failed to satisfactory explain the delay observing as under:

“3.4 As per letter 26.06.2014 issued by the head office to the assessee, the assessee was advised to deal with the case with the help of an advocate at their level. In the earlier affidavit of District Manager, there was no mention of communication dated 12.07.2014 received from the Head Office regarding filing of revision petition. The assessee has also not filed copy of head office letter 12.07.2014 to support its contentions.

*Thus it is observed that the assessee was advised by the Head Office on 26.06.2014 to deal with die case with the help of an advocate. However, while filing the reasons for condonation of delay, the assessee has ignored to mention the advice given by the Head Office vide letter dated 26.06.2014. The Hon'ble Supreme Court in the case of Ram Lai Vs. Rewa Coalfield AIR 1962 SC 351 had held that while seeking condonation of delay under section 5 of the Limitation Act, the application must not only show as to why he did not file the appeal on the last day of limitation but he must explain each days delay in filing the appeal. The appellant has failed to explain the delay in filing of appeal after getting instructions from the head office on **26.06.2014**. Moreover, vide filing application for condonation of delay, this material fact was not brought out. The assessee has failed to satisfactorily explain the delay in filing of the appeal. Therefore, the request for condonation in filing of appeal is dismissed.”*

5. To explain the delay in filing appeal from 01.04.2014 to 17.07.2014, the assessee has filed condonation petition and written submission as under:-

That the Hon'ble ITAT in the order has stated that delay for the period from 1st/May/2014 to 17th/July/2014 may be explained to the CIT(A).

That on 04/April/2014 we send the letter to Head Office at Chandigarh via Letter No: 53/04.04.2014, stating that the case has been decided against the Punjab State Warehousing Corporation and the ITO has created a demand u/s 156 of Income Tax Act which was received in the office on 31.03.2014 (Annexure-1 enclosed herewith).

That when we don 't receive any update from the Head Office regarding how to pursue the case, we again send the reminder to head office on 24.04.2014 vide Letter No: 314 seeking the instruction from Head Office with reference to letter

already send to them dated 04.04.2014 (Annexure-2). Another reminder forwarded to Head Office, Chd on 20/05/2014 vide Letter No: 266 (Annexure-3).

That after that when again no reply has been received from the Head Office at Chandigarh, then Sh. Jasbir Singh (Accountant), Employee of the Punjab State Warehousing Corporation, went to Chandigarh personally to discuss the matter at Head Office, because appeal has to be filed in Stipulated time (copy of Attendance Sheet is enclosed herewith in which Chandigarh Tour is specifically mentioned).

After getting the permission from Head Office to file an appeal we went to council Sh. Vijay K. Malhotra & Sh. Sachin K. Malhotra to file an appeal before Commissioner of Appeals at Jalandhar, but when we talked to him, he told us that the date of filling of Appeal has expired and the only option left with us is to file the Revision petition with C1T (TDS) at Chandigarh.

That after that again we have to take the permission from Head Office that can We file the revision petition, for that again Mr. Jasbir Singh Accountant PSWC-Hoshiarpur called the Head Office many times but again it took about 20 days to get the permission from the Head Office regarding filling of revision petition and the permission was finally granted on 12/07/2014, then we engage Sh. Vijay PL Malhotra & Sh. Sachin K- Malhotra (Advocate) as the counsel and it took him about 5-6 days to prepare the revision petition and filling the same on 18/07/2014. Affidavit regarding the same by the Accountant, permanent employee of Corp. Mr. Jasbir Singh is enclosed herewith for your kind perusal (Annexure-4).

The reasonable cause made the delay in filling the appeal/revision in time, being a Govt. Department it took so much time to get the permission, Else there was no intention to delay in filling the appeal/ revision petition.

Hence looking at the Circumstances of the case the delay in filling the same may please be condoned.

I would like to. draw your kind attention to: -

1. **Collector Land Acquisition V/s Mst. Katiji and others 167 ITR 471**

It has been held by Hon 'able Supreme Court that Condonation of delay :- Sufficient cause:- for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merits in preference to approach which scuttles a decision on merits- the power to condone delay is conferred with a view to enable the courts to do substantial justice to litigants by disposing of the cases on merits- There is no warrant for according a step motherly treatment when the state is the applicant praying for condonation of delay.

2. Pan India Network V/s State of Punjab (P& H) 80 of 2013 (O& M) 22/07/2013

It has been held by the Court that "At this stage it would be appropriate to reiterate the law laid down by the Hon'ble Supreme Court and by this court that where delay is not intentional or mala fide or the conduct not so negligent as to be unacceptable, Tribunal/Court should generally accept the application for condonation of delay.

3. Branch Manager J & K Bank V/s ITO Jammu ITAT Amritsar) ITA No. 609 and 610 of 2011

4. Shri Rakesh Sharma V/s ITO Jammu ITA No 363/2010 (ITAT Amritsar)

In all these cases it has been held by the Hon 'able court that where delay is not intentional or malafide or the conduct not so negligent as to be unacceptable, Tribunal/Court should generally accept the application for condonation of delay.

So in the light of the judgments passed by the Hon 'able Courts and facts of the case it is requested your good self that our appeal may please be condoned and Appeal may heard on merits."

6. The Ld. Addl. CIT (DR) stands by the orders of the CIT(A).

7. Heard the Ld. DR at length and gone through the condonation petition, ITAT order and material on record. Admittedly, the appellant has persuaded the matter with Head Office to seeking permission for filing appeal vide letter

dated 04.04.2014 (Annexure-2) and a reminder forwarded to Head Office, Chd on 20/05/2014 vide Letter No: 266 (Annexure-3). It is mentioned by the appellant that Sh. Jasbir Singh (Accountant), Employee of the Punjab State Warehousing Corporation, deputed to Chandigarh personally to discuss the matter of filing appeal in stipulated time with Head Office. On receiving permission from Head Office to file an appeal, Sh. Vijay K. Malhotra & Sh. Sachin K. Malhotra, counsel advised to file the Revision petition with C1T (TDS) at Chandigarh instead of filing appeal as the date of filling Appeal before Commissioner of Appeals at Jalandhar, has stated to be expired.

8. Accordingly, to file the revision petition, again Mr. Jasbir Singh Accountant PSWC, Hoshiarpur in spite of many efforts, it took about 20 days to get the permission from the Head Office regarding filling of revision petition and the permission was finally granted on 12/07/2014, and then it engaged Sh. Vijay PL Malhotra & Sh. Sachin K- Malhotra (Advocate) as the counsel who took about 5-6 days to prepare the revision petition and filling the same on 18/07/2014. An Affidavit of the Accountant, permanent employee of Corp. Mr. Jasbir Singh is enclosed (Annexure-4). The appellant pleaded that there was a reasonable cause without any malafide intention for the said delay in filling the appeal/revision in time. The appellant being a

being a Govt. Department, it took so much time to get the permission, else there was no intention to delay in filling the appeal. It was requested to condone the delay and heard the appeals on merits. The Ld. DR although stands by the impugned order but had no objection to condonation of the delay in filing the appeals.

9. The Hon'ble Jurisdictional High Court in case of "Pan India Network V/s State of Punjab", (Supra) held that it would be appropriate to reiterate the law laid down by the Hon'ble Supreme Court and by this court that where delay is not intentional or mala fide or the conduct not so negligent as to be unacceptable, Tribunal/Court should generally accept the application for condonation of delay.

10. In the instant case, the appellant is a government undertaking and required to take necessary permission for filling the appeal from its head office which could not be received in time in spite of several reminders and personal deputation of staff duly supported with an affidavit. In our view, the delay in seeking permission for filing appeal in time from head office was a reasonable cause beyond the control of the appellant and accordingly we hold that the delay was not intentional or mala fide.

11. In the above view, we hold that the order of the CIT(A) is perverse to the facts on record as the explanation of the appellant is held to be reasonable and justified for the delay from 1st May, 2014 to 17 July 2014. Accordingly, the disputed period of delay in filing the appeal is condoned and the Ld. CIT(A) is directed to hear and adjudicate the matter on merits afresh after granting adequate opportunity of being heard to the assessee and considering the material evidence on record by passing a speaking order. The appellant shall cooperate in fresh proceedings before the CIT(A).

12. In the result, the appeals filed are allowed for statistical purpose.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 31.01.2023.

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order