

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No. 1161/Bang/2022
Assessment year : 2015-16

SNR Rural Education Trust, Savanoor, Savanoor Post, Puttur – 574 202. PAN: AADTS 2191R	Vs.	The Assistant Commissioner of Income Tax, CPC, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Srinivas Kamath, CA
Respondent by	:	Shri D.K. Mishra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	16.03.2023
Date of Pronouncement	:	17.03.2023

ORDER

Per Padmavathy S., Accountant Member

This appeal is at the instance of assessee directed against the order of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], Delhi dated 14.9.2022 for the assessment year 2015-16.

2. The assessee is a Trust and filed return of income on 31.3.2016 for AY 2015-16. The original return was processed u/s. 143(1) and the intimation was passed on 21.10.2016 where there were disallowances to the tune of Rs.1,65,45,343. The assessee observed certain errors in

the original return filed and accordingly filed a rectification request on on 31.3.2017 which got rejected on 14.07.2017.

3. The assessee preferred appeal before the CIT(A) where there was a delay of 523 days in filing the appeal. The assessee submitted before the CIT(A) that the assessee came to know of the rejection of the rectification request only in March 2018 while filing the return of income for the subsequent year i.e. AY 2016-17 and that the appeal was filed on 27.04.2018 once the assessee came to know of the rejection. The assessee did not file any further response to the various notices of hearing called for by the CIT(A) specifically on the issue of reasons for delay. The CIT(A) therefore dismissed the appeal in limine without condoning the delay. The CIT(A) held that the assessee has offered insufficient reasons for the delay in filing the appeal and relying on the decisions of CIT v Ram Mohan Kabra (P&H), JCIT v. Tractors & Farm Equipments Ltd. [2007] 104 ITD 149 (Chennai) (TM), ITO v. Hemraj Onkarji Mali [2007] 108 TTJ 1061 (Indore), Madhu Dadha v. ACIT (2009) 317 ITR 458 (Mad), the CIT(A) denied condonation of inordinate delay of 523 days. The assessee is appeal before the Tribunal against the order of the CIT(A).

4. Before us the ld AR submitted that the assessee is used to receiving the correspondence from department manually and is new to e-portal. Therefore the assessee was not aware that the return has been processed u/s.143(1) and that the rectification filed on 31.03.2017 is also rejected. The ld AR further submitted that the assessee filed the

appeal soon after coming to know of the said rejection in March 2018. The Id AR also submitted that he as the counsel for the assessee had certain personal issues due to ill health of immediate family members and could not advise the assessee properly on the receipt of intimation u/s.143(1) which has also resulted in the inordinate delay in filing the present appeal. In this regard, the Id AR submitted documents supporting the medical conditions of the close family members, affidavit filed for condoning the delay in subsequent years etc. The Id AR submitted that the delay was not intentional on the part of the assessee and accordingly prayed for one more opportunity to present the case on merits before the appellate authorities.

5. The Id DR vehemently objected to condoning the delay by submitting that the assessee is changing reasons for the delay from what was submitted before the CIT(A). Further the Id DR submitted that the assessee did not appear before the CIT(A) during the course of appellate proceedings also. Therefore the Id DR submitted that the appeal should be rejected and the delay should not be condoned.

6. We heard the parties and perused the material on record. Before adjudicating the issue in assessee's case we will look at the certain judicial pronouncement rendered in the context of condonation of delay –

(i) 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, common sense 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 nondeliberate 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.

(ii) The Madras High Court in the case of CIT v. K.S.P. Shanmugavel Nadar and Ors. (153 ITR 596) considered the delay of condonation and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Accordingly, the Madras High Court condoned nearly 21 years of delay in filing the appeal.

(iii) The Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM) condoned more than six hundred days delay. It

is pertinent to mention herein that the view taken by the present author in that case was overruled by the Third Member.

(iv) The Madras High Court in the case of Sreenivas Charitable Trust (supra) held that no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their 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 and the expression “sufficient cause” should receive a liberal construction. Therefore, this Judgment of the Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression “sufficient cause” should receive a liberal construction.

(v) A similar view was taken by the Madras High Court in the case of Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad).

(vi) The Mumbai Bench of this Tribunal in the case of Bajaj Hindusthan Ltd. v. Jt. CIT (AT) (277 ITR 1) has condoned the delay of 180 days when the appeal was filed after the pronouncement of the Judgment of the Apex Court.

(vii) The Apex Court in the case of Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi (AIR 1978 SC 537) held that non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counteraffidavit opposing the application of the assessee, therefore, as held by the Apex Court, there is sufficient cause for condonation of delay. The Supreme Court observed that when the delay was of short duration, a liberal view should be taken. It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. The Apex Court did not say that longer period of delay should not be condoned. Condonation of delay is the discretion of the Court/Tribunal.

7. From the perusal of the above judicial pronouncements we notice that the following principles emanate,

- (i) Condoning the delay would depend upon the facts of each case
- (ii) When there is sufficient cause for not filing the appeal within the period of limitation, the delay has to be condoned irrespective of the duration/period.
- (iii) Not condoning the delay should not amount to legalise an illegal and unconstitutional order.
- (iv) While construing the expression “sufficient cause” the principle of advancing substantial justice is of prime importance and the expression “sufficient cause” should receive a liberal construction.

8. Now coming to assessee's case, the Id AR made a fresh submission before the Tribunal stating that the ill health of his close family members did not allow him to give time to his professional commitment due to which the intimation and the rejection of rectification was not auctioned upon within the stipulated time. We notice that the various documents in terms of medical report substantiating the said claim and the affidavit etc., were also not submitted before the appellate authorities. We further notice that there was no representation before the CIT(A) except a letter dated 03.12.2018 by the assessee. Considering these facts, documents submitted before us and the principles laid down by the judicial pronouncements as above, we in the interest of justice consider it fit to give one final opportunity to the assessee to represent before the CIT(A). Accordingly we remit the issue back to the CIT(A) with a direction to consider the issue of condonation of delay in filing the

appeal afresh keeping in mind the circumstances of the case and the principles laid down and decide in accordance with law. The CIT(A) is further directed to consider the appeal on merits in accordance with the decision made regarding the condonation of delay. The assessee is a directed to represent the case properly before the CIT(A) without seeking any further time or adjournments and cooperate with the proceedings by submitting the relevant documents. It is ordered accordingly.

9. In the result, the appeal is allowed for statistical purposes

Pronounced in the open court on this 17th day of March, 2023.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 17th March, 2023.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.