IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.As No.1425 & 1426/DEL/2022
Assessment Years 2017-18 & 2018-19

Indrawati, Nagal Kheri, Panipat.	v.	Deputy Commissioner of Income Tax, Central Processing Centre, Bangalore.
TAN/PAN: AAFPI4486N		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	19	04	2023
Date of pronouncement:	19	04	2023

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the Assessee against the orders of the Commissioner of Income Tax (Appeals) NFAC, Delhi ('CIT(A)' in short) both dated 19.04.2022 arising from the assessment orders both dated 18.08.2020 passed by the Assessing Officer (AO) under Section 154 of the Income Tax Act, 1961 (the Act) concerning AYs 2017-18 and 2018-19 respectively.

2. The appeals were heard together and are being disposed of by way of this consolidated order.

3. The grounds of appeal raised by the assessee concerning

Assessment Year 2017-18 in ITA No.1425/Del/2022 is reproduced hereunder:

"1. That the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) [CIT(A)] erred on facts and in law in dismissing the appeal filed by the Appellant only on the ground of delay in filing of appeal against the intimation/order passed by the Centralized Processing Centre, Bangalore ('CPC'] in intimation issued under section 143(1) of the Income Tax Act, 1961 ('the Act').

2. That the CIT(A) erred on facts and in law in not affording adequate opportunity to the Appellant for explaining the reason in detail for delay in filing of appeal and therefore the impugned order is perverse for being violative of Principles of Natural Justice.

3. That the CIT(A) erred on facts and in law in not appreciating that the appellant is a humble rural agriculturist/farmer Lady, neither having any formal educational qualification nor any taxable income for the year under consideration and had no willful or deliberate intention for delay in filing of appeal; therefore adopting of hyper technical approach to avoid substantive justice by CIT(A) is contrary to the law of land laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji (1987) 2 SCC 107; N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123; Vijay Vishin Meghani vs. DCIT 398 IT 250 (Bom).

4. That the CIT(A), has dismissed the appeal without giving any finding on the merits of the case, and merely on the ground of delay in filing an appeal, it is respectfully submitted, that the order passed by the CIT(A), is liable to be set-aside on this count itself.

5. That the CIT(A) erred on facts and in law in not appreciating that the adjustments permitted under the section 143(1) are (a) any arithmetical error in the return; and (b) an incorrect claim apparent from any information in the return. Further, Explanation to section 143(1) of the Act defines "an incorrect claim apparent from any information in the return" to, inter-alia, mean (i) inconsistent entries within the return; (i) non-furnishing of required information in support of entry(ies) in return; and (iii) claim of deduction in excess of specified statutory limit.

6. That the CIT(A) erred on facts and in law in not appreciating that the CPC has grossly erred in invoking provisions of section 143(1) for making addition of Rs. 19,86,198 which is clearly illegal and in excess of its jurisdiction and therefore the intimation issued under section 143(1) of the Act by CPC deserves to be quashed/set aside.

7. That the CIT(A) erred on facts and in law in not appreciating that

no requisite enquiry was conducted by the Assessing Officer while disallowing the exemption under section 10(37) of the Act and accordingly, the addition made is illegal.

8. That the CIT(A) erred in not following the binding principle laid down by the Hon'ble Supreme Court in the case of CIT vs. Ghanshyam: 315 IT 1 and in various other judgements squarely applicable to the facts of the case of the Appellant herein.

9. The Appellant craves leave to add to alter, amend or vary the aforesaid grounds of appeal before or at the time of hearing."

4. When the matter was called for hearing, none appeared for the assessee. The matter was accordingly proceeded ex-parte.

5. The ld. Sr.DR for the Revenue relied upon the order of the CIT(A).

6. On perusal of the first appellate order, it is straightaway observed that the CIT(A) has dismissed the first appeal *in limine* on the ground that the appeal filed by the assessee before it is belated, i.e., 48 days delay without giving any reason. It is noticed that the impugned first appellate order was instituted on 5th November, 2020 as against the date of order appealed against of 18.08.2018. It is claimed in the grounds of appeal that the CIT(A) has not provided any adequate opportunity to the assessee for explaining the reasons for delay in filing the appeal. As further pointed out the assessee is from a humble background and a rural agriculturist / farmer lady and neither the assessee possess any formal educational qualification nor any taxable income was earned during the year under consideration and therefore, no *mala fide* can be imputed for small delay in filing first appeal by adopting hyper technical approach. A reference to the judgments in the case of *Collector,*

Land Acquisition vs. Mst. Katiji, (1987) 2 SCC 107; N. Balakrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123 and Vijay Vishin Meghani Vs. DCIT, 398 ITR 250 (Bom).

7. There can be numerous occasions faced by a tax payer/litigant where he is unable to exercise his right for filing appeal within the period prescribed in the statute. One such undisputable reason is fiery pandemic which was a long haul at the relevant time and entire 2020 was engulfed to an unprecedented scale. The calendar year of 2020 being traumatic beyond human comprehension, a small delay of few months should be reckoned benignly particularly where no serious prejudice has caused to the Revenue by such delay. It is trite that the action of the State which result in civil consequences must met the test of reasonableness. A small delay of 48 days cannot by any means be branded as colossal delay resulting in prejudice to the other side. The sufficient cause contemplated under Section 249(3) of the Act is implicit in the pandemic year. We thus find that assessee has reasonable explanation in offer having regard to the background of the assessee as well as the ongoing pandemic at the relevant time. The Hon'ble Supreme Court in the case of *Collector of land acquisition vs. Mst. Katiji & Ors. 167 ITR 471 (SC)* has laid down the guiding principles for adopting a liberal approach in the matter of condonation of delay. The principles laid down by the Hon'ble Supreme 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 out 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.

1. " 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."

3. "Every day's delay must be explained" does not mean that 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 considerations 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 serious risk.

6. It must be grasped that the 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. "

8. The principles enunciated by the Hon'ble Courts say it all.

9. In the light of facts and circumstances, we are of the view that the assessee has sufficiently discharged its burden for small delay. The cause of substantial justice deserves to be preferred over technical considerations in the facts of the present case. The delay occurred in filing the appeal before the CIT(A) thus stand condoned and the appeal before CIT(A) deserves to be admitted for adjudication on merits in accordance with law.

10. Accordingly, appeal in ITA No.1305/Ahd/2016) is restored to the file of the CIT(A) for *de novo* adjudication on merits in accordance with law after giving fair opportunity to the assessee.

11. The facts in issue in ITA No.1425/Del/2022 are similar and thus the observations shall apply *mutatis mutandis*.

12. In the result, both the captioned appeals are allowed for statistical purposes.

Order pronounced in the open Court on 19/04/2023.

Sd/- Sd/-

[KUL BHARAT] **[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

DATED: **/04/2023**

Prabhat