

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **766/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2015-16

Shri. S. Mathialagan, Assistant Commissioner of
C/o. DURV and Associates LLP, v. Income Tax,
Old No. 19, New No. 13B, New Non-Corporate Circle 13,
Bangaru Colony First Street, Chennai.
K K Nagar West, Chennai –
600 078.

[PAN: AGNPM-2592-F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. B. Ramakrishnan, FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 26.06.2023

घोषणा की तारीख/Date of Pronouncement

: 12.07.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-14, Chennai, dated 31.12.2018 and pertains to assessment year 2015-16.

2. The brief facts of the case are that, the assessee is an individual and filed its return of income for the assessment year 2015-16 on 31.10.2015, declaring total income of Rs. 69,59,680/-. The case was selected for scrutiny and assessment has been completed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 27.12.2017 and determined total income of Rs. 1,26,37,320/-, by making additions towards difference between consideration paid for purchase of property and guideline value u/s. 56(2)(vii)(b) of the Act, and additions towards cash deposits. The assessee carried the matter in appeal before the first appellate authority and the Id. CIT(A), for the reasons stated in their appellate order dated 31.12.2018, dismissed appeal filed by the assessee. Aggrieved by the Id. CIT(A) order, assessee is in appeal before us.

3. At the outset, we find that there is a delay of 1287 days in appeal filed by the assessee, for which an affidavit for condonation of delay for filing of appeal explaining reasons for such delay has been filed. The Ld. Counsel for the assessee, referring to affidavit filed by the appellant submits that the delay has been classified into three categories and as per

which, delay before Covid period, delay covered by Covid period and delay after Covid period. The Ld. Counsel for the assessee, further submits that if you exclude delay covered under Covid period, in view of Hon'ble Supreme Court order in Sumoto Writ Petition No. 3/2020, then the actual number of days delay needs to be condoned is 490 days. He further submits that the appellant has accepted the CIT(A) order and paid tax along with interest based on the advice of his tax consultant on the bonafide belief that no penalty would be leviable on additions made on notional basis. However, the Assessing Officer has initiated penalty proceedings u/s. 271(1)(c) of the Act and without taking into account the submission of the assessee passed order imposing penalty u/s. 271(1)(c) of the Act. Further, the above facts have been brought to the knowledge of the appellant only after approaching the new tax consultant Mr. B. Ramakrishnan, Partner of M/s. CNGSN Associated LLP, Chartered Accountants and the new consultant advised the appellant to file appeal against the order of the Id. CIT(A) before Income Tax Appellate Tribunal with a delay of 1287 days. Therefore, he submits that the said delay is neither intentional nor to derive any undue benefit, but beyond the control of the appellant and

thus, the delay in filing of appeal may be condoned in the interest of advancement of substantial justice. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji in [1987] 1987 taxmann.com 1072 (SC).

4. The Id. DR present for the revenue opposing petition filed by the assessee for condonation of delay submits that the assessee fails to make out a case of reasonable cause for condonation of huge delay in filing of appeal and further, the reasons given by the appellant that he was under bonafide belief that no penalty would be levied is an afterthought, which is evident from the fact borne out from record. Therefore, he submits that appeal filed by the assessee should be dismissed as unadmitted.

5. We have heard both the parties and considered relevant contents of petition filed by the assessee for condonation of delay of 1287 days in filing of appeal. We have also carefully considered reasons given by the assessee for delay in filing of the appeal. From the reasons given by the assessee, we find that the assessee has failed to make out a case of reasonable

cause as provided under the Act for condonation of delay, because the arguments of the Counsel of the assessee that the period of delay should be categorized into pre-covid period, covid period and after covid period is illogical and devoid of merits. As long as there is a delay, then said delay needs to be explained even it is one day delay. In this case, the total number of days delay in filing of appeal is 1287 days, even if you exclude delay covered under covid period, number of days delay before and after covid period is 490 days. Therefore, in order to condone such huge delay in filing of appeal, the assessee should give sufficient reasons which prevented the assessee to file appeal within time allowed under the Act. In the present case, if you go through reasons given by the appellant in their affidavit, we find that the appellant shifting the blame to the consultant, who advised or handled tax case of the assessee, before authorities without any supporting evidence to justify his arguments. Further, it is a matter on record that the assessee has engaged a Counsel to represent his case before the Assessing Officer. Further, the appellant case was also represented by the CA before the CIT(A). From the above, it is very clear that the assessee was advised by professionals who are well conversant with tax laws and

procedures provided for appeals etc. Therefore, the arguments of the assessee that he was under bonafide belief that no penalty would be levied if taxes are paid on disputed appeal and because of this he did not file appeal within time allowed under the Act is nothing but an arguments to circumvent the delay caused in filing of appeal. Therefore, we are of the considered view that the reasons given by the appellant does not come under reasonable cause as provided under the Act for condonation of delay in filing of appeal.

6. At this stage, it is relevant to consider the decision of ITAT, Chennai Benches in the case of M/s. Balaji Autos vs ACIT in iTA No. 535/Chny/2022 dated 29.07.2022. The tribunal under identical set of facts held that the reasons given by the appellant does not come under reasonable cause as provided under the Act for condonation of delay. The relevant findings of the Tribunal are as under:

*"5. We have heard both the parties and considered the petition filed by the assessee for condonation of delay of 1070 days. We have also carefully considered reasons given by the assessee for delay in filing of the appeal. We find that prima facie the reasons given by the assessee, in the affidavit for condonation of delay of 1070 days, seems to be not **bona fide**. We have gone through the affidavit filed by the assessee and also examined sequence of events and after considering necessary facts, we are of the considered view that the reasons given by the assessee in affidavit is not bona fide.*

Therefore, we are of the considered view that there is no merit in the reasons given by the assessee in the petition for condonation of delay in filing of the appeal.

6. *Be that as it may. Coming back to the legal position evolved by the decision of various High Courts, including the Hon'ble Supreme Court in number of cases, where it has been, time and again, held that when merits and technicalities pitted against each other, then merit alone deserves to be prevailed, because, if you throw out a meritorious case out of judicial scrutiny on the grounds of technicalities, then you may deprive the right of the petitioner in pursuing their case. At the same time, various Courts have held that rules of limitation are not meant to destroy the rights of parties, they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly, within the time bound prescribed under the Act. Further, in a case, where, for the reasons beyond the control of the petitioner, the appeal could not be filed, then the Courts are well equipped with power to condone the delay, if the petitioner explains the delay in filing of the appeal with a reasonable cause. However, there is no law or mandate in the Act, to condone the delay in each and every case. But, it depends upon all facts of each case and the reasons given by the parties for condonation of delay. Therefore, one has to go by the facts of its own case and the reasons given by the petitioner for condonation of delay. In this case, on perusal of reasons given by the assessee for delay in filing of the appeal, we find that although it appears, the assessee is not deriving any benefit by not filing the appeal within the due date prescribed under the Act, but, from contents of petition filed by the assessee, we could easily make out a case that the assessee has made an afterthought to file the appeal against the order of the CIT(A). Therefore, in our considered view, for these vague reasons, such huge delay of 1070 days in filing of the appeal, cannot be condoned.*

7. *In so far as the arguments of the learned Counsel for the assessee, in light of decision of the Hon'ble Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh &Ors.(supra) that ignorance of law is also an excuse, but if you examine the facts of the present case, we are of the considered view that the assessee is not ignorant of law, because, the assessee was well aware of the Income Tax proceedings and further, hired professional Chartered Accountant, for representing its case. Thus, we are of the*

considered view that the case laws relied upon by the assessee, are not applicable to the facts of the present case.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessee has failed to make out a prima facie case for condonation of delay of 1070 days in filing of the appeal before the Tribunal. Further, the reasons given by the assessee in the affidavit does not come under reasonable cause as prescribed under the Act, for condonation of delay. Hence, we reject the petition filed by the assessee for condonation of delay and dismiss the appeal filed by the assessee."

7. Coming back to the case law relied upon by the Ld. Counsel for the assessee, the Ld. Counsel for the assessee took support from the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji (Supra). We have carefully gone through the case law relied upon by the Ld. Counsel for the assessee in light of facts of present case and we find that the facts of present case is entirely different from the case before the Hon'ble Supreme Court. In the case before the Hon'ble Supreme Court, it was only a delay of less than a month and further the deponent was aged women and under those facts the Hon'ble Supreme Court held that refusing to condone delay can result in 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. In the very same judgment, Hon'ble Supreme Court categorically held that each and every day's delay must be explained with reasons. Further, it is for the Deponent to give sufficient and bonafide reasons for condonation of delay.

8. In the present case, if you go through reasons given by the Deponent, we find that the appellant is shifting the blame on the consultant who advised him in his tax matters, but the fact borne out from record says otherwise, which is evident from fact that the appellant decided to file the appeal against CIT(A) order only after receipt of order passed by the Assessing Officer imposing penalty u/s. 271(1)(c) of the Act. In our considered view, the decision taken by the appellant to file appeal against order of the CIT(A) is not on the basis of bonafide mistake but conscious decision taken not to continue litigation by filing appeal before the tribunal. Therefore, from the above reasons given by the appellant for explaining the delay, at best it can be considered as an afterthought, but not bonafide. Therefore, we are of the considered view that the reasons given by the appellant for condonation of delay are

not sufficient and bonafide and thus, we dismiss appeal filed by the assessee as inadmissible.

8. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the court on 12th July, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 12th July, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF