

अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **3, 4, 5 & 6/CHNY/2021**
निर्धारण वर्ष /Assessment Years: 2014-15, 2012-13, 2013-14 & 2011-12

**Avalon Technologies Pvt.
Ltd.,**
TPI Block, B-7 & B-8,
I Main Road,
MEP-SEZ, Tambaram,
Chennai – 600 045.

1. The ACIT (OSD) / DCIT,
v. Corporate Range 1,
2. The DCIT,
Corporate Circle 1(1),
Chennai – 34.

PAN: AACCA 4147K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri D. Anand, Advocate
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 06.07.2023
घोषणा की तारीख/Date of Pronouncement : 31.07.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals filed by the assessee are directed against three different orders passed by the Commissioner of Income Tax (Appeals)-1, Chennai in ITA Nos.195/CIT(A)-1/2015-16, 65/CIT(A)-1/2016-17 and 555 & 556/CIT(A)-1/2016-17 of various dates 06.09.2016, 28.02.2018 & 29.01.2018. The assessments were framed by the DCIT, Central Circle 1(1), / ACIT (OSD), Corporate

Range 1, Chennai for the assessment years 2011-12, 2012-13 & 2013-14 u/s.143(3) r.w.s.92CA of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 31.03.2015, 11.03.2016, 26.12.2016 respectively and by the DCIT, Corporate Circle 1(1) for the assessment year 2014-15 u/s.143(3) of the Act vide order dated 31.12.2016.

2. At the outset, it is noticed that these appeals are delayed by more than 4 to 5 years. The details are as under:-

<u>Dates and Events</u>				
Asst. Year	Date of order	Due date for Appeal	Appeal filing date	No. of Days Delay
2011-12	06.09.2016	05.11.2016	06.01.2021	1523
2012-13	28.02.2018	30.04.2018	06.01.2021	983
2013-14	29.01.2018	30.03.2019	06.01.2021	1013
2014-15	28.02.2018	30.04.2018	06.01.2021	983

The facts and circumstances as contended by the Id.counsel for the assessee are identical regarding delay and hence, will take up the facts from ITA No.4/CHNY/2021 for assessment year 2012-13.

3. At the outset, the Id.counsel for the assessee drew our attention to the application filed for condonation of delay along with affidavit and the relevant affidavit given by the Managing Director reads as under:-

AFFIDAVIT OF SHRI THAYAGATH PUTHAN VETTEL
IMBICHAMMAD

I Thayagath Puthan Vettel Imbichammad, Son of Mr. Moosa Koya aged about 82 years, having office at TPI Block, B-7 & B-8, 1st Main Road, MEPZ-SEZ, Tambaram, Chennai-600045 do here by solemnly and sincerely affirm and state as follows: -

1. I am the Managing Director of the petitioner company and I am fully acquainted with the facts of the case leading to and relating to the present petition.

2. I submit that being aggrieved with the order of assessment for the assessment year 2012-13, the petitioner had filed an appeal before the first appellate authority on number of issues and the learned Commissioner of Income Tax (Appeals), Chennai vide his orders dated 28.02.2018 allowed the petitioner appeal in part. Consequent to the orders of the first appellate authority the petitioner had paid all taxes and no proceedings were pending before the revenue authorities.

3. On receipt of the orders from the first appellate authority, the petitioner had handed over the said order to its authorized representative for advice and follow up action. However, no specific advice was given by the authorised representative, who appeared for the petitioner before the first appellate authority, in respect of filing of appeal before the Hon'ble ITAT, therefore the petitioner could not file appeal within specified date.

4. This being so, the petitioner submits that for the AY 2009-10 both the petitioner and the Department had filed an appeal before the Hon'ble ITAT in ITA Nos: 1775/Chny/2016 and ITA 214/Chny/ 2017. For the AY 2010-11 the petitioner had preferred an appeal before the Hon'ble ITAT in ITA No. 445/Chny/2016. The said appeals are pending before the Hon'ble Tribunal and the same is being handled by a different counsel other than the counsel who appeared before the first appellate authority. The aforesaid appeals are posted before the Hon'ble ITAT A Bench on 12.01.2021.

5. The petitioner states that during the third week of December 2020 it had to meet its present counsel appearing before ITAT, to discuss pending cases before the ITAT and also to decide whether availing VSVS would be beneficial to the petitioner. The petitioner submits that during the course of discussion, issues pertaining to the present assessment year also surfaced. It

was during the course of this discussion the petitioner was advised to file appeals for the impugned assessment year, although with a delay.

6. The petitioner submits that on being advised by the present counsel to file an appeal for the impugned assessment year, the petitioner immediately got the appeal papers ready and filed it through the present counsel and filed the same on 6.01.2021 with a delay of 983 days. In normal course the petitioner should have filed the appeal on 30.04.2018 but has filed the present appeal on 6.01.2021 with a delay of 983 days.

7. The petitioner submits that it could not file the appeal before the Hon'ble ITAT within the stipulated timeline since no specific advice was given to the petitioner by the authorised representative who appeared before the first appellate authority. Further there were frequent manpower changes due to the resignation of some employees in the finance and accounts department of the appellant during the such period coupled with various assessments that were to be attended during the said period.

8. The petitioner submits that the delay in filing the appeal is not deliberate and is neither wilful nor wanton but only due to reasons that it was not advised to file an appeal. The petitioner submits that the delay is due to the aforesaid bona fide reason and there is no taint mala fides or element of recklessness or ruse. The petitioner humbly submits when substantial justice and technical considerations are opposed to each other, cause of substantial justice has to be preferred to prevent financial injury to the petitioner and to prevent unjust hardship, further when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

9. The petitioner in the above circumstances humbly prays that the Hon'ble Tribunal be pleased to take a liberal, pragmatic, justice-oriented, non-pedantic view and condone the delay of 983 days in filing the appeal for the AY 2012-13 since refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

10. It is therefore prayed that the Hon'ble Tribunal may be pleased to condone the delay of 983 days in filing the appeal for the AY 2012-13 before the Income Tax Appellate Tribunal and render justice.

4. We noted that the delay in this assessment year is 983 days, as the order of CIT(A) dated 28.02.2018 was received by the assessee as per Form No.36 is 28.02.2018. It means that the period stating for delay does not fall under Corona and maximum period pertains to non-corona period. The Id.counsel for the assessee before us contended that the entire fault was on the part of the earlier counsel who has not provided any specific advice, who appeared before the first appellate authority. Further, there was frequent manpower change due to the resignation of some employees in the finance and accounts department during such period coupled with various assessments that were to be attended.

4. We confronted these reasons to Id.CIT-DR. He drew our attention to the decision of Hon'ble Madras High Court in the case of Ajmeer Sherriff & Co. vs. ITO in Tax Case (Appeal) No.529 of 2014 and referred to paras 9 & 10 as under:-

9. The principles involved and the approach needed while considering the application for condonation of delay has been highlighted in the decision reported in 2013 (5) CTC 547 (Esha Bhattacharjee V. Managing Committee of Raghunathpur, Nafar Academy and others, and the relevant portions are extracted for convenient reference:-

"15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the

courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

10. We find that the appellant in the present case has been lackadaisical in their approach and in a nonchalant manner they have tried to seek

condonation of delay. The Supreme Court in the decision referred supra has deprecated the practice of showing leniency in unwarranted fact situation. The parameters laid down by the Supreme Court as to when the delay should not be condoned get squarely attracted to the facts of the present case and therefore, we find no reason to condone the delay. The Tribunal was correct in dismissing the appeal on that score.

5. The case law cited by Id.counsel of assessee of Hon'ble Madras High Court in the case of Rarefield Engineers Pvt. Ltd., vs. ACIT in T.C.A. No.161 of 2023, the delay was only 380 days and Hon'ble High Court has considered the issue on substantial justice due to short delay. Similarly, in the case law relied on by the Id.counsel of the assessee in the case of Venkatadri Traders Ltd., vs. CIT, 248 ITR 681 of Hon'ble Madras High Court, the delay was of 5 months and that also the reason *"that the need for filing a revision arose only after it was found that the amount received by the assessee for the Candouble was required to be treated as capital gain in the year of receipt and, consequently, the accrued interest on which tax had been paid for the earlier years had been wrongly included in those years as his income."*

5.1 We noted that the assessee is unable to prove that there are resignations or there is shortage of employees in the finance and accounts department. Even the assessee admitted in its affidavit that it has filed appeal before ITAT for assessment year 2009-10

and the same is pending adjudication. This appeal was filed before ITAT in 2016 & 2017, their details are given in para 4 of the affidavit as reproduced above. Hence, the assessee is unable to prove bonafide that there is reasonable cause for non-filing these appeals. Hence, we do not condone the long delay of 4 to 5 years. Hence, we dismiss the appeal as un-admitted. Accordingly, all the four appeals of the assessee are dismissed as unadmitted.

6. In the result, the appeals filed by the assessee in ITA Nos.3,4,5 & 6/CHNY/2021 are dismissed.

Order pronounced in the open court on 31st July, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 31st July, 2023

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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