

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA Nos.6139 & 6140/Del/2019  
Assessment Years: 2011-12 & 2013-14

Chintel India Limited, C/o Kapil Goel Adv., F-26/124 Sector- 7, Rohini, Delhi 110085 <b>PAN AAACC 0897 N</b>	vs.	The ACIT, Central Circle-17, New Delhi 110002
(Appellant)		(Respondent)

For Assessee:	Shri Kapil Goel, Adv.
For Revenue :	Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing :	02.08.2023
Date of Pronouncement :	17.08.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

These appeals have been filed against the order of Ld. CIT(A)-27, New Delhi dated 07.06.2019 for AYs 2011-12 & 2013-14.

**Issue of denial of condonation of delay by Id. CIT(A).**

2. The Id. counsel submitted that order passed by Id CIT A dated 07/06/2019 is bad in law in as much as delay of 603 days in filing appeal before Ld CIT-A deserved to be condoned due to un-availability of appeal counsel Mr Mathur handling appeal matters of appellant company due to paralytic without any apparent reason for any negligence attributable to assessee specially where assessee has fool proof case on merits squarely covered by Hon'ble ITAT order in identical facts in assessee own case which required lenient and compassionate consideration in matter of condonation of delay thus order of Ld CIT-A being perverse and arbitrary deserves to be overruled. The Id. counsel drawing our attention towards condonation petition filed before Id. CIT(A) submitted that the learned First Appellate Authority grossly erred in denying condonation despite the fact that the Senior Counsel of assessee Shri. S.M Mathur had undergone bypass surgery at that time and the assessee submitted all relevant documentary evidences

before him submitting the sufficient cause explaining the delay. Therefore, the Id. counsel submitted that the delay before Id. CIT(A) in filing first appeal may kindly be condoned. The Id. counsel has relied on the following judgments of Hon'ble Supreme Court, Hon'ble High Court of Delhi and Hon'ble High Court of Bombay:-

1. N. Balakrishnan v M Krishna Murthy 1998 (7) SCC 123
2. H.L Malhotra & Com. vs. DCIT 431 ITR 148 (Del)
3. Vijay Meghani vs. ITO 389 ITR 250 (Bom)
4. Peter Vaz vs. CIT 436 ITR 76 (Bom)

3. Replying to the above, the Id. Senior DR strongly opposed to the condonation of delay and submitted the assessee could have engaged another counsel or consultant for filing appeal within prescribed time limit before the Id. CIT(A) therefore inordinate delay in filing appeal was rightly denied as there was no sufficient and reasonable cause of delay.

4. On careful consideration of above submission, we are of the view that the Hon'ble Supreme Court in the case of N. Balakrishnan v M Krishna Murthy 1998 (7) SCC 123 and Hon'ble jurisdictional High Court of Delhi in the case of H.L Malhotra & Com. vs. DCIT (supra), as relied by the Id. counsel, held that if there is sufficient cause explaining the delay then the same should be condoned as the assessee never benefited by the delayed filing of appeal. In the present case the assessee wanted to depend on particular consultant Shri S.M Mathur whereas the revenue justifying the denial of condonation by suggesting that the assessee should have engaged other counsel or consultant. The revenue is not entitled to suggest the assessee to manage his tax litigation it is choice of assessee that how he wants to proceed before the tax authorities. The Id. CIT(A) has not disputed or doubted factum of illness of Shri S.M Mathur who undergone bypass surgery during relevant time period. Therefore respectfully following the proposition rendered by Hon'ble Supreme Court in the case of N. Balakrishnan v M Krishna Murthy Others (supra) and judgment of Hon'ble jurisdictional High Court in the case H.L Malhotra & Com. vs. DCIT (supra) the delay in filing appeal before Id. CIT(A) is condoned and ground no. 1 of assessee is allowed.

5. Since the Id. CIT(A) has dismissed appeals in limine denying condonation of delay with expressing any adjudication on merits therefore both the appeals are restored to the file of Id. CIT(A) for adjudication of first appeal on merits without being influenced with the earlier first appellate order. Accordingly, ground no. 2 is allowed for statistical purposes.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 17.08.2023.

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 17<sup>th</sup> August 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi