

अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
**Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G., Accountant Member**

आयकर अपील सं./I.T.A. Nos.891 and 892/Chny/2023
निर्धारण वर्ष/Assessment Year: 2013-14 [Quarter 2-26Q] & [Quarter 4 – 24Q]

Amulya Leather Impex,
Plot No. 39, VGP Amudha Nagar,
Maduravoyal, Chennai 600 095.
[PAN: AADFA4763F]

Vs. The DCIT/ACIT/
Income Tax Officer,
TDS Ward 1(3),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing	:	17.10.2023
घोषणा की तारीख /Date of Pronouncement	:	17.10.2023

आदेश /ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the orders of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi, dated 02.06.2023 relevant to the assessment year 2013-14 [[Quarter 2-26Q] & [Quarter 4 – 24Q].

2. Both the appeals filed by the assessee are delayed by 11 days in filing the appeal, for which, the assessee has filed petition for condonation of the delay in support of affidavits. In the petition, the assessee has submitted that there is reasonable cause for the delay and the delay in

filing the appeal is neither wilful nor wanton and prayed for condonation of delay and to admit the appeals for adjudication. Against the above submissions made in the petition, the Id. DR has not raised any serious objection. Considering the above, we hereby condone the delay and admit the appeals for adjudication.

3. Brief facts of the case are that both the appeals were preferred by the assessee before the Id. CIT(A) against the order passed by the Assessing Officer under section 200A of the Income Tax Act, 1961 ["Act" in short] dated 08.12.2013. As per details furnished by the assessee in Form 35, the Id. CIT(A) has noted that the impugned order appealed against dated 08.12.2013 was served on the assessee on 08.12.2013 itself and the assessee filed appeals on 12.01.2023 within an inordinate delay of 3292 days [3322 days (from 09.12.2013 to 12.01.2013) – 30 days]. The assessee filed petition for condonation of delay. After considering the grounds taken for condonation of delay and rejecting the same, the Id. CIT(A) dismissed the appeals filed by the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal. None appeared on behalf of the assessee when the appeals were taken up for hearing. Hence, we proceed to decide the appeals after hearing the Id. DR.

5. We have heard the Id. DR, perused the materials available on record and gone through the appellate orders. The grounds taken by the assessee for condonation of delay in filing the appeals before the Id. CIT(A), which were reproduced in the appellate order are extracted hereunder for the sake of clarity:

"This is to inform you that there has been a delay in filing of appeal. The delay was consequent to several factors

a) We had over the interaction with the department taken the view that number of applications before the income tax department and cases were pending before the high courts and that the department will not be press for late filing fees for returns filed belatedly before 2015 as the amendment has been affected to the provisions of sec 200A only in the present year of appeal and that the department will grant relief basis the view basis court judgments.

b) The chartered accountant of the firm was himself dealing with his personal difficulty with his wife being in a persistent vegetative state (comatose) and consequent therefore also there was a delay in filing the appeal and until her demise on 29/04/2018 as he was too engaged with her bed side care and trauma associated therewith. Also, the doctors responsible for causing this devastating catastrophe were criminally convicted and therefore the chartered accountant had to be in Delhi to assist the lawyers to ensure that the doctors concerned were brought to justice. The dates when the case was posted in the Supreme Court is also attached herewith which went on till March 2020 when corona stalled all proceedings. The letter by the chartered accountant along with the medical certificates is attached herewith.

c) We beg to mention that the period from March 2020 to Feb 2022, the supreme court has also given directions that the period of delay during this period shall be condoned In view of the above and basis on a Bonafide belief that relief will be given on propriety, there has been a delay of 3292 days in fling of the appeal. We make the above submissions with all honesty and sincerity and request your kindness for condonation of delay in filing the appeal as otherwise we will suffer miscarriage of justice for a procedural delay where there is no loss of revenue either to the department or any loss has been suffered by the deductee.

6. In terms of decision of the Hon'ble Supreme Court, the assessee has prayed that the period of delay in filing the appeal from 15.03.2020 to 28.02.2022 can be condoned i.e., period of 716 days out of 3292 days.

7. After considering the above grounds taken for condonation of delay, the Id. CIT(A) has observed as under:

5.0 However, it is important to note that the period of delay in filing the appeal prior to 15.03.2020 cannot come under the purview of the period of the delay excluded by the decision of the Hon'ble Supreme Court (supra) In view of this, the assessee cannot take shelter under the decision of the Hon'ble Supreme Court (supra), in respect of inordinate delay occurred up to 14.03.2020. Accordingly., the assessee is under legal obligation to explain the delay from 09.12.2013 to 14.03.2020 i.e., 2288 days and 01.03.2022 to 12.01.2023 i.e., 318 days without attributing the same to the onset of Covid19 pandemic and consequent decision of the Hon'ble Supreme Court (supra), as the case may be.

8. After considering relevant provisions of section 249 of the Act, the Id. CIT(A) has observed as under:

8.0 In this regard, the assessee should file an application for condonation of delay at the time of filing the appeal n Form NO 35, along with the details/reasons in order to demonstrate existence of "sufficient cause" for such delay in filing the appeal. Also, it is well settled legal position that, in support of the genuineness of reasons and for demonstrating "sufficient cause" for not filing the appeal within the stipulated due date, the assessee should file an affidavit along with supporting documentary evidence issued by competent authority such as Medical Certificate, copy of VISA etc., as the case may be. While doing so, the assessee should explain the reasons for each day delay in filing the appeal.

9.0 In the instant case, while filing Form No 35. though the assessee has filed certain reasons for delay in filing the appeal in the form of petition for condonation of delay, but failed to adduce any plausible reasons with supporting documentary evidence in respect of the entity (Status: Association of Persons) or its operational persons [but not the persons like chartered accountant or advocate or employees in the organisation or any other third person] to demonstrate that there was sufficient cause for an inordinate delay of 2576 days in filing the appeal within the meaning of sec. 249(3) of the Act.

10.0 I have carefully considered the reasons put forward by the assessee in support of delay in filing the appeal. At this juncture, it is important to note that in accordance with well settled legal position, while deciding the petition filed for condonation of delay, the adjudicating authority should keep in mind two important factors i.e.,

1. Whether it is a minor delay of a few days or inordinate delay running into several months.

2. Whether the assessee has established his bona fides with regard to existence of sufficient cause which prevented from filing the appeal within the due date prescribed as per the provisions of the law.

11.0 In the instant case, it is an admitted fact that the assessee's case would fall under the category of inordinate delay of 2576 days i.e., more than 7 years and, therefore, it is not possible to approach the case from the liberal view point. Accordingly, the delay in filing the appeal should be viewed by applying strict rules of limitation law and judicial precedents.

12.0 In view of this, I have analysed the reasons adduced by the assessee for delay in filing the appeal and found that the assessee has failed to prove its bona fides inasmuch as the said reasons are not supported by any tangible material evidence and appears to be casual in nature.

13.0 To be precise, the main reason for delay in filing the appeal has been stated to be persistent vegetative state and demise of the wife of the Authorised Representative on 29.04.2018. In this regard, a death certificate of the wife of the Authorised Representative is furnished against the deficiency notice addressed to the appellant by this appeal unit. It is important to note at this juncture that the above reason submitted may be a sufficient cause to accept a minor delay of 30 to 45 days by keeping in mind the difficulty in sudden change of a chartered accountant for the assessee. The delay in filing of appeal about of 2576 days excluding Covid-19 period cannot be condoned without having sufficient cause. The causes/reasons furnished are not satisfactory to condone the delay and take up the case for adjudication. Even this could have been considered as a reason if the assessee entity had been out of business operation from the FY 2013-14 onwards. That is not the case and no such information is on record.

14.0 In view of the above, it is amply clear that the assessee has taken non-acceptable ground for a delay in filing the appeal. Therefore, in my opinion, there is no sufficient cause for condoning the delay of 2576 days as analysed in preceding paragraph. Thus, in the absence of any other reasons adduced by the assessee, am of the considered opinion that delay in filing the appeal had occurred in the instant case on account of sheer negligence and inaction on the part of the assessee in adhering to the provisions of law.

15.0 As such, it is amply clear that the assessee has not advanced any relevant reasons, let alone cogent and plausible reasons, for an inordinate delay of 2576 days, except stating the cause of health issues and fighting the court cases by its chartered accountant in his personal sphere but not related to the assessee entity. It

is observed from the digital records, the appellant is regularly complying in time with all other provisions of the law such as filing the quarterly TDS returns and returns of income etc. after receipt of the impugned order. The above statutory compliances may not be possible without continuous help of a chartered accountant. When the assessee is able to comply with all these statutory obligations, there would not be any hindrance in filing the appeal in time or with a minor delay which can be condoned.

16.0 Further, it may be noted that it is well established law that the very crux of having a limitation law in force is that a person cannot sleep over his rights for an indefinite period and seek such remedy at a later stage. Thus in the instant case, in the absence of any other Compelling reasons adduced by the assessee, I am of the considered opinion that delay in filing the appeal had occurred on account of sheer negligence, nonchalant attitude and inaction on the part of the assessee in adhering to the provisions of law.

17.0 Also, it may be noted that in order to get the delay condoned in filing the appeal, the assessee has to show sufficient cause within the meaning of sec. 249(3) of the Act. Further, it is well settled legal position that sufficient cause means a cause beyond the control of the assessee. However, in the instant case, as explained in the preceding paragraphs, the assessee has not put forward any reasons demonstrating the cause beyond the control of the assessee by virtue of which it was prevented from filing the appeal in time.

18.0 Also, the assessee has not explained each day's delay in filing the appeal. At this juncture, it is also important to note that, as per the settled position of law, adjudication of condonation of delay is a matter of discretion of the adjudicating authority/court and not of right of the applicant. Under the circumstances, keeping in view the fact that there has been inordinate delay of 1825 days, I am of the considered opinion that the assessee has failed to prove its bona fides to establish with evidence that it was prevented by unavoidable circumstances from filing the appeal or there was sufficient cause for not filing the appeal in time.

9. By relying upon various case law, the Id. CIT(A) place reliance on the landmark judgement of the Hon'ble Supreme Court in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others in CIVIL APPEAL Nos. 8183-8184 OF 2013 vide order dated 13.09.2013 [(201 3) 12 SCC 649], wherein, the Hon'ble Supreme Court has laid down the basic principles to be considered while adjudicating the issue pertaining to condonation of delay in filing the

appeals, in which, it has been clearly distinguished, inter alia, that the cases filing under inordinate delay should be dealt with seriously as against the cases falling under minor delay of few days.

10. We find that after excluding Covid-19 pandemic period, absolutely, there is an inordinate delay of 2576 days i.e., more than seven years delay in filing the appeal before the Id. CIT(A). In the condonation petition, the main reason for delay in filing the appeal has been stated to be persistent vegetative state and demise of the wife of the Authorised Representative on 29.04.2018 by filing death certificate of the wife of the Authorised Representative. The above reason submitted may be a sufficient cause to accept a minor delay of less than 50 days by keeping in mind the difficulty in sudden change of a Chartered Accountant for the assessee. However, in the present case, there is an inordinate delay of 2576 days in filing of appeal excluding Covid-19 period cannot be condoned without having sufficient cause as has been enunciated in various judgements of various Courts including the Hon'ble Supreme Court as referred in the appellate order.

11. In view of the above facts and circumstances and various case law relied on in the appellate order, we are of the considered opinion that the Id. CIT(A) has rightly rejected the condonation petition filed by the

assessee to condone the inordinate delay in filing the appeals before the Id. CIT(A) and dismissed the appeals of the assessee. We do not find any valid reason to interfere with the order passed by the Id. CIT(A). Thus, both the appeals filed by the assessee are dismissed.

12. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced in the open Court on 17th October, 2023 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 17.10.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.