

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No. 192/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2009-10**

Upendra Singh Chauhan  
Nayapara, Jagdalpur,  
Chhattisgarh-494 001.

PAN : AFUPC3193D

..... अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer  
Jagdalpur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 16.10.2023

घोषणा की तारीख / Date of Pronouncement : 20.10.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals)-1, Raipur, dated 24.03.2015, which in turn arises from the order passed by the A.O under Sec.148/144 of the Income-tax Act, 1961 (in short 'the Act') dated 31.05.2013 for the assessment year 2009-10.

2. On a perusal of the record, it transpires that the assessee has filed an application, wherein it is stated by him that though the order of the CIT(Appeals), dated 22.03.2015, was received by him for the first time on 08.05.2023, i.e., on an application filed with the CIT(Appeals)-1, Raipur for a copy of the order on 22.12.2022, but as a matter of abundant precaution he has filed an application for condonation of delay, if any, involved in filing of the present appeal.

3. Shri S.R. Rao, the Ld. Authorized Representative (for short, 'AR) for the assessee took us through the application of the assessee, which is supported by an "affidavit" dated 13.10.2023, stating as under:

"(a) That the applicant was deriving income from truck plying business and filed return of income for A.Y. 2009-10 on 29/07/2009 declaring total income at Rs.1,43,369/-.

(b) That the Id. Assessing Officer completed the assessment on 31/05/2013 ex-parte u/s.144 of the Income-tax Act, 1961 and assessed total income at Rs.24,79,055/-.

(c) That aggrieved by the ex-parte Assessment order, applicant filed appeal before Id. Commissioner of Income-tax (Appeals)- 1, Raipur on 10/01/2015.

(d) That subsequently, when the appeal was fixed for hearing the applicant was represented through his counsel and written submission was also filed.

(e) That some criminal proceedings were framed against him and the charges were confirmed by the learned Sessions Court and aggrieved by said order the applicant filed appeal before the Hon'ble Chhattisgarh High Court, wherein the conviction was reduced subject to payment of fine vide order dated 15/01/2020 in Criminal Appeal No.337 of 2002. Copy of order of Hon'ble High Court is enclosed herewith as Annexure-1.

(f) That during pendency of criminal appeal the applicant was on bail. He was facing the prosecution proceedings since 2013 and in order to avoid serious threats received from opposite parties, he was keeping himself away from the city even during bail period.

(g) That in between in connection with some other incident, criminal proceedings were wrongly framed against him and in the subsequent proceedings, due to order of Hon'ble Supreme Court that prohibiting him in residing in Bastar District including his home town Jagdalpur, he was constrained to stay away from his permanent postal address.

(h) That on 25/11/2022 a notice from the Tax Recovery Officer for recovery proceedings was received at his address by Shri Manoj Kashyap S/o Manbodh Kashyap, Veer Saravarkar Ward, Jagdalpur, who is a permanent servant of the applicant and he handed over it to CA Arvind Kaushik. On perusal of the aforesaid notice, it was found that demand of Rs.27,23,882/- was outstanding for A.Y. 2009-10. It was informed by the IT Office, Jagdalpur that the appeal has been dismissed but the applicant did not receive any order because of above circumstances, mainly he was out of home from long since. He had also filed reply before Id. TRO, Raipur and copy of the reply is enclosed herewith as Annexure-2.

(i) That on being informed about these developments, applicant, on being so advised, desired to file second appeal but copy of 1st appeal order was not available with him as it was not served upon him. Hence he requested the Id. Commissioner of Income-tax (Appeals), Raipur for supply of copy of 1st appellate order vide application dated 22/12/2022 after paying challan of Rs.100/-. Copy of application along with enclosure is enclosed herewith as Annexure-3 for kind perusal.

(j) That the appellant immediately after receipt of copy of Id. Commissioner of Income-tax (Appeals) order filed the present appeal. Thus, there is no delay in filing the appeal. However, as a matter of

abundant precaution the appellant is filing present application for condonation of delay, if any.

(k) That the as per appellant's humble understanding he has got a strong case on merits and the balance of convenience is in his favour as substantial relief was granted in other similarly situated cases by Hon'ble Tribunal and the Ld. CIT(A). In view of above facts and circumstances it is humbly prayed that the Hon'ble Tribunal may be pleased to condone the delay, if any and admit the appeal for adjudication in the interest of justice. An affidavit in support of application is enclosed herewith as Annexure-4.”

4. The Ld. AR, elaborating on the reasons leading to the delay in filing the present appeal, submitted that some criminal charges were framed against the assessee, which, thereafter, were confirmed by the Ld. Session Court. The Ld. A.R. submitted that the assessee had thereafter approached the Hon'ble High Court of Chhattisgarh, wherein his conviction was reduced vide order dated 15/01/2020 in Criminal Appeal No. 337 of 2002. Elaborating further, the Ld. A.R. submitted that during the pendency of the aforesaid proceedings, the assessee had remained on bail. The Ld. A.R further mentioned that the assessee had been facing prosecution proceedings since 2013, and in order to avoid serious threats that he was receiving from the opposite parties, he had remained away from his hometown. The Ld. A.R submitted that thereafter, in another incident certain criminal charges were wrongly framed against the assessee, and as the Hon'ble Supreme Court had prohibited the assessee from residing in District: Bastar, including his hometown, i.e., Jagdalpur, he, thus, was constrained to stay away from his permanent address. The assessee had, in his application, further stated that he had learned about the order of the CIT(Appeals), dated 22.03.2015, only when a notice from the

office of the Tax Recovery Officer, Raipur was served on his permanent servant, viz. Shri. Manoj Kashyap, who had thereafter delivered the same to Shri. Arvind Kaushik, i.e., the Chartered Accountant of the assessee. The assessee further states that it was only after having received the aforesaid notice that, on further verifications, it was gathered that his appeal had been dismissed by the CIT(Appeals). The Ld. AR submitted that as the order of the first appellate authority was not served upon the assessee, he had requested the CIT(Appeals), Raipur, for a copy of the same.

5. Referring to the aforesaid facts, it was submitted by the Ld. AR that as the assessee had received the order of the CIT(Appeals), dated 22.03.2015 only on 08.05.2023, thus, there was no delay in filing the present appeal on 13.05.2023. At the same time, the Ld. A.R. submitted that in case there is any delay involved in filing the present appeal, then considering the compelling circumstances in which the assessee at the relevant point of time was placed, the same may kindly be condoned. The Ld. AR, in support of his aforesaid contention, had relied on the order of the ITAT, Amritsar, in the case of M. K Hotels and Resorts Ltd. Vs. ACIT, (2023) 104 ITR (Trib) 204 (Asr).

6. Per contra, the Ld. Departmental Representative (for short 'DR') vehemently submitted that there was an inordinate delay of 8 years (approx.) involved in the filing of the present appeal, which does not merit to be condoned. The Ld. D.R submitted that the claim of the assessee that the order of the CIT(Appeals), dated 24.03.2015, was received by him only as on

22.12.2022, i.e., after more than 7 ½ years is beyond comprehension. The Ld. D.R. submitted that there was a clear delay of 8 years (approx.) involved in the filing of the present appeal by the assessee. It was, thus, submitted by the Ld. DR that the inordinate delay involved in the filing of the present appeal does not merit to be condoned and the appeal be dismissed as being barred by limitation.

7. I have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions as regards the delay involved in filing the present appeal.

8. Before proceeding any further, I may herein observe that there is no substance in the claim of the assessee that he had received the order of the CIT(Appeals), dated 24.03.2015, only as on 22.12.2022, i.e., after more than 7 ½ years. Although it is the claim of the assessee that he, due to the aforesaid compelling circumstances, had remained away from his house at Shanti Nagar Ward, Jagdalpur, District: Bastar, but at the same time, I find that he had stated in his application that the notice from the office of the Tax Recovery Officer, Raipur was received by his Permanent Servant, viz. Shri. Manoj Kashyap s/o Mammbodh Kashyap, Veer Sawarkar Ward, Jagdalpur, who, thereafter, had delivered the same to Shri. Arvind Kaushik, i.e., the Chartered Accountant of the assessee. Thus, even if the claim of the assessee that due to his absence

from his hometown, he had not received the order of the CIT(Appeals) is to be accepted (though not admitted), then the fact that his aforesaid Permanent Servant, viz. Shri. Manoj Kashyap (supra) was available at his house with instructions to deliver the income-tax documents to Shri. Arvind Kaushik, Chartered Accountant of the assessee, therein, renders the claim of the assessee that he had remained unaware of the order of the CIT(Appeals)-1, Raipur, dated 24.03.2015 which would have been sent to his house at Shanti Nagar Ward, Jagdalpur, District: Bastar, being devoid and bereft of any merit and reasoning cannot be accepted.

9. Apart from our aforesaid observation, I am unable to comprehend that the fact that the appeal of the assessee was disposed off by the CIT(Appeals)-1, Raipur, vide his order dated 24.03.2015 could have remained unnoticed for more than 7 ½ years, specifically when the assessee was represented before the CIT(Appeals)-1, Raipur, by an advocate, viz. Shri. S. Rajeswar Rao, Advocate, and was also availing the services of a Chartered Accountant, i.e., Shri. Arvind Kaushik (supra). In my considered view, the assessee, merely in order to cover up his lackadaisical conduct and sheer carelessness as regards filing of the present appeal within the stipulated time period, had come up with the claim that he had remained unaware of the fact that his appeal had been disposed off by the CIT(Appeals)-1, Raipur, vide his order dated 24.03.2015. Considering the aforesaid facts, I am of the view that there is a delay of 8 years (approx.) involved in filing of the present appeal by the assessee.

10. Backed by the fact that there is a delay of 8 years (approx.) involved in filing the present appeal, I shall now deal with the facts stated by the assessee in his application for condonation of delay. On a perusal of the aforesaid condonation application read a/w. the "affidavit" (supra), I find that there is no genuine cause leading to the substantial delay of 8 years (approx.) involved in the filing of the appeal. The Ld. AR for the assessee also could not come forth with any plausible explanation as regards the huge/inordinate delay of 8 years (approx.) involved in preferring the captioned appeal by the assessee. It is apparent from the application read a/w. "affidavit" filed by the assessee that he had, without any justifiable reason, delayed preferring the present appeal by 8 years (approx.). Considering the totality of the facts and circumstances under consideration, I am of the view that as there is an inordinate delay of 8 years (approx.) involved in the filing of the captioned appeal, for which the assessee had failed to come forth with any justifiable reason, therefore, as stated by the Ld. DR and, rightly so, the same does not merit to be condoned. The assessee has not given any genuine reason for the delay in filing the captioned appeal either in his application seeking condonation of delay and the "affidavit" filed before me; or in the course of hearing of the appeal. All that the Ld. A.R had tried to canvass before me the unawareness of the assessee about the fact that the CIT(Appeals)-1, Raipur, had disposed off his appeal vide his order dated 24.03.2015, for the reason that at the relevant point of time, there were criminal cases pending against the assessee due to which he had remained

unavailable in his hometown pursuant to directions of the Court, which claim of the assessee does not find favor with me. I find no substance in the claim of the assessee that the delay, if any, involved in filing the present appeal was due to bonafide reasons, and the same does not smack of any lackadaisical conduct on his part. In fact, if I admit the present appeal and summarily accept the unsubstantiated claim of the assessee that he had remained unaware of the order of the CIT(Appeals), dated 24.03.2015 and thus, impliedly condone the inordinate delay of 8 years (approx.) involved in the present case based on such unsubstantiated claim, then it would send a wrong message and would lay down a wrong precedent for the times to come. I am of a strong conviction that as the assessee had, on account of his callous conduct and lackadaisical approach, delayed the filing of the present appeal by a substantial period of 8 years (supra); therefore, the application filed by him seeking condonation of the delay therein involved does not merit acceptance and is liable to be rejected.

11. The co-ordinate bench of the Tribunal in the case of **M/s. Phoenix Mills Ltd. Vs. Asstt. CIT in ITA No.6240/MUM/2007, dated 23.03.2020**, had held that where an application for condonation of delay has been moved bonafide, then the Court would normally condone the delay, but where the delay has not been explained at all and in fact there is an unexplained and inordinate delay coupled with negligence or sheer carelessness, then, the discretion of the court in such cases would normally tilt against the applicant. Reverting to the

facts of the present case, I have already examined the reasons that had led to the inordinate delay of 8 years (approx.), which I find the assessee had failed to explain had occasioned due to bonafide reasons. As observed by me hereinabove, as the assessee had remained negligent regarding the process of law before the Tribunal and had filed the appeal after 8 years (approx.), therefore, there appears to be no reason to adopt a liberal view and condone the inordinate delay therein involved. Also, I may observe at this juncture that the law of limitation has to be construed strictly as it has an effect of vesting on one and taking away the right from the other party. The delay in filing the appeals cannot be condoned in a mechanical or routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

12. I may herein observe that in the case of **State of West Bengal Vs. Administrator Howrah 1972 AIR SC 749**, the **Hon'ble Apex Court** had held that the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice, particularly when there is no motive behind the delay. The expression "sufficient cause" will always have relevancy to reasonableness. The action that the court can condone should fall within the realm of normal human conduct or the normal conduct of a litigant. However, as observed by us hereinabove, as the assessee appellant in the present case had failed to come forth with any genuine bonafide reasons leading to the

inordinate delay of 8 years (approx.) involved in filing the present appeal, there can be no reason to allow his application and condone the same.

13. Also, I may herein draw support from a “**Third Member**” decision of the Tribunal, in the case of **Jt. CIT Vs. Tractors and Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai)**, wherein a fine distinction was drawn between normal delay and inordinate delay. It was held as under:

“A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach, but in the latter case no such consideration may arise and such a case deserves a liberal approach.”

In the present case, the delay of 8 years (approx.) cannot be simply condoned on the basis of the unsubstantiated claim of the assessee.

14. Also, as observed by the **Hon’ble Supreme Court** in the case of **Ramlal, Motilal and Chotelal Vs. Rewa Coalfields Ltd. AIR (1962) 361 (SC)** that the seeker of justice must come with clean hands; therefore, now, when in the present appeals, the assessee appellant had failed to come forth with any good and sufficient reason that would justify condonation of the substantial delay involved in preferring of the captioned appeals, I decline to condone the delay of 8 years (approx.) and, thus, without adverting to the merits of the case dismiss the captioned appeal of the assessee as barred by limitation.

15. Apropos the reliance placed by the Ld. AR on the order of the **ITAT, Amritsar** in the case of **M. K Hotels and Resorts Ltd. Vs. ACIT, (2023) 104 ITR (Trib) 204 (ITAT-Asr)**, the same being distinguishable on facts as against those involved in the captioned appeal before me, would thus not assist his case. In the case before the ITAT, Amritsar in M.K Hotels and Resorts Ltd. (supra), the reason for the delay in filing the appeal was an admitted fact that the order of the CPC u/s 143(1) of the Act was sent on the e-mail id of the assessee's accountant who had left the service of the assessee company long ago and had never informed the management of the assessee company as regards the order passed by the CPC. As it is not the case of the assessee that the order of the CIT(Appeals) was served on his employee or relative etc., who had not intimated him about the same, therefore, I am of the view that the aforesaid order of the Tribunal would not carry the case of the present assessee before us any further.

16. Resultantly, in the absence of any bonafide reason explaining the inordinate delay of 8 years (approx.) involved in filing the present appeal, I am constrained to dismiss the same as barred by limitation.

17. In the result, the appeal of the assessee is dismissed in terms of my aforesaid observations.

Order pronounced in open court on the 20<sup>th</sup> day of October, 2023.

**Sd/-**  
**(रवीश सूद /RAVISH SOOD)**  
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 20<sup>th</sup> October, 2023  
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**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.