

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 Nos. 127 & 128/RPR/2023**

**निर्धारण वर्ष / Assessment Years : 2018-19 & 2019-20**

Rokadiya Wahid  
C/o. Mohd. Dilawar Rokadia,  
Mahalaxmi Enclave, Sihawa Road,  
Dhamtari-493 773  
PAN : ACFPW4546A

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 20.11.2023

घोषणा की तारीख / Date of Pronouncement : 22.11.2023

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

The captioned appeals filed by the assessee are directed against the orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 19.01.2023 & 23.01.2023, which in turn arises from the order/intimation passed/issued by the Centralized Processing Center (CPC)/A.O under Sec. 154 of the Income-tax Act, 1961 (in short 'the Act') dated 01.09.2020 for the assessment year 2018-19 AND u/s. 143(1) of the Act dated 16.10.2020 for A.Y.2019-20. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.127/RPR/2023 for assessment year 2018-19 and the order, therein, passed shall *mutatis-mutandis* apply to the remaining appeal. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in sustaining the disallowance of Rs.12,84,160/- u/s. 36(1)(va) being employees contribution to “Employee Provident Fund (EPF) paid after the due date specified.

2. The appellant craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing.”

3. Controversy involved in the present appeal lies in a narrow compass i.e. sustainability of the order of the CIT(Appeals) who had approved the order passed

by the CPC, Bengaluru u/s. 154 of the Act wherein addition/disallowance of the delayed deposit of employees share of contribution towards Employee's Provident Fund (EPF) made u/s. 36(1)(va) of the Act of Rs.12,84,160/- has been sustained.

4. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold of hearing of the appeal submitted that the present appeal involves a delay of 22 days. It was submitted by him that the delay in filing of the appeal had occasioned because the assessee had delayed the depositing of the appeal fees. The Ld. AR had drawn my attention to an "affidavit" dated 13.10.2023 filed by the assessee explaining the reasons leading to the delay. For the sake of clarity the relevant contents of the "affidavit" is culled out as under:

शपथ पत्र

शपथकर्ता निम्नलिखित शपथ पूर्वक ब्यान प्रस्तुत करता है।

यह कि शपथ कर्ता का नाम तथा पता उपरोक्तानुसार है।

यह कि मे. वाहिद रोकडीया धमतरी के नाम से अपने व्यवसाय का संचालन करता हूँ।

यह कि कर निर्धारण वर्ष 2018×19 हेतु आयकर कि धारा 143(1) के अंतर्गत आदेश 01/09/20 पारित किया गया था।

यह कि उक्त वर्ष के आदेश के विरुद्ध अपील, अपीलीय कमीशनर रायपुर के समक्ष प्रस्तुत कि गयी थी जिसका आदेश दिनांक 19/01/2023 को पारित हुआ था।

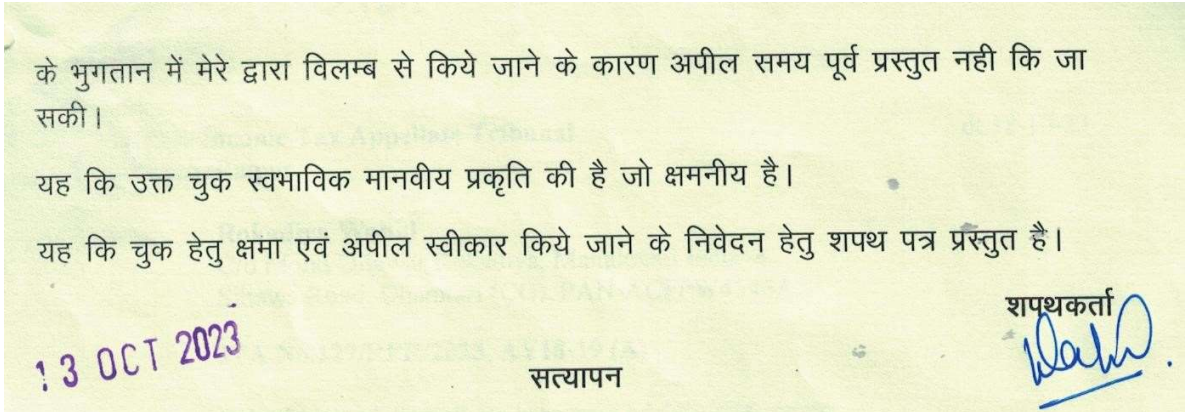
यह कि उक्त अपीलीय कमीशनर के आदेश के विरुद्ध अपील माननीय अपीलीय प्राधीकरण के समक्ष दिनांक 11/04/23 को प्रस्तुत कि गयी थी।

यह कि उक्त अपील माननीय अपीलीय प्राधीकरण के समक्ष समय बाधित के बाद प्रस्तुत कि गयी थी। यह कि अपील के प्रस्तुती के लिए मेरे अधिवक्ता के द्वारा दिये गये अपीलीय शुल्क



13 OCT 2023

*Wahid*



5. Per contra, the Ld. Departmental Representative (for short 'DR') had raised objection to the seeking of the condonation of delay in filing of the present appeal by the assessee appellant.

6. On a careful perusal of the facts leading to the delay in filing of the present appeal, I am unable to persuade myself to subscribe to the same. I, say so, for the reason that the delay in filing of the present appeal can by no means be held to be justified for the reason that the assessee had delayed deposit of the appeal fees. As no reason has been given as to why there was a delay in depositing of the appeal fees by the assessee appellant, the explanation of the assessee as regards the delay in filing of the present appeal being devoid and bereft of any merits cannot be summarily accepted on the very face of it. Alternatively, I find that now when the assessee had deposited appeal fees on 07.04.2023 (i.e. on Friday), therefore, considering the delay that was already involved in filing the appeal, there was no justifiable reason for him to have not filed the appeal either on the same date or on the next working date i.e. on 10.04.2023 (i.e. on Monday). Considering

the callous and lackadaisical conduct of the assessee wherein he had not only in absence of any justifiable reason delayed the filing of the present appeal but also continued with his lackadaisical approach after depositing the appeal fees and preferred not to immediately file the appeal, I am unable to persuade myself to concur with the claim of the Ld. AR that the delay in filing of the appeal had occasioned for bona fide reasons.

7. 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 for A.Y.1999-2000, 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, which has not been explained by the assessee to have occasioned due to bonafide reasons. As observed by me hereinabove, as there was no justifiable reason for the assessee to file the appeal before me after 22 days, therefore, there appears to be no reason to adopt a liberal view and condone the 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 of the appeals cannot

be condoned in a mechanical or a routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

8. 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 which can be condoned by the court should fall within the realm of normal human conduct or normal conduct of a litigant. However, as observed by me hereinabove, as the assessee appellant in the present case is acting in defiance of law, therefore, there can be no reason to allow his application and condone the substantial delay of 22 days involved in preferring of the captioned appeal.

9. Also, I may herein draw support from a Third Member decision of a co-ordinate Bench 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 22 days cannot be simply condoned on the basis of the unsubstantiated claim of the assessee that the same had occasioned on account of failure on the part of assessee in delaying the deposit of the appeal fees for filing the appeal before the Tribunal.

10. 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 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 delay involved in preferring of the captioned appeal, therefore, I decline to condone the delay of 22 days and, thus, without adverting to the merits of the case dismiss the captioned appeal of the assessee as barred by limitation.

11. In the result, the appeal of the assessee in ITA No.127/RPR/2023 for A.Y. 2018-19 is dismissed in terms of my aforesaid observations.

**ITA No.128/RPR/2023**  
**A.Y.2019-20**

12. In the captioned appeal, the assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in sustaining the disallowance of Rs.9,81,473/- u/s. 36(1)(va) being employees contribution to “Employee Provident Fund (EPF) paid after the due date specified.

2. The appellant craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing.”

13. Controversy involved in the present appeal lies in a narrow compass i.e. sustainability of the order of the CIT(Appeals) who had approved the intimation issued by the CPC, Bengaluru u/s. 143(1) of the Act wherein addition/disallowance of the delayed deposit of employees share of contribution towards Employee's Provident Fund (EPF) made u/s. 36(1)(va) of the Act of Rs.9,81,473/- has been sustained.

14. Shri Sunil Kumar Agrawal, Ld. Authorized Representative ( for short 'AR') at the threshold of hearing of the appeal submitted that the present appeal involves a delay of 18 days. It was submitted by him that the delay in filing of the present appeal had occasioned because the assessee had delayed in depositing the appeal fees. The Ld. AR had drawn my attention to an "affidavit" dated 13.10.2023 filed by the assessee explaining the reasons leading to the delay. For the sake of clarity the relevant contents of the "affidavit" is culled out as under:

शपथ पत्र

शपथकर्ता निम्नलिखित शपथ पूर्वक ब्यान प्रस्तुत करता है।

यह कि शपथ कर्ता का नाम तथा पता उपरोक्तानुसार है।

यह कि मे. वाहिद रोकडीया धमतरी के नाम से अपने व्यवसाय का संचालन करता हूँ।

यह कि कर निर्धारण वर्ष 2019×20 हेतु आयकर कि धारा 143(1) के अंतर्गत आदेश 16/10/2020 पारित किया गया था।

यह कि उक्त वर्ष के आदेश के विरुद्ध अपील, अपीलीय कमीशनर रायपुर के समक्ष प्रस्तुत कि गयी थी जिसका आदेश दिनांक 23/01/2023 को पारित हुआ था।

यह कि उक्त अपीलीय कमीशनर के आदेश के विरुद्ध अपील माननीय अपीलीय प्राधीकरण के समक्ष दिनांक 11/04/23 को प्रस्तुत कि गयी थी।

यह कि उक्त अपील माननीय अपीलीय प्राधीकरण के समक्ष समय बाधित के बाद प्रस्तुत कि गयी थी। यह कि अपील के प्रस्तुत करने में मेरे अधिवक्ता के द्वारा दिये गये अपीलीय शुल्क



13 OCT 2023

के भुगतान में मेरे द्वारा विलम्ब से किये जाने के कारण अपील समय पूर्व प्रस्तुत नहीं कि जा सकी।

यह कि उक्त चुक स्वभाविक मानवीय प्रकृति की है जो क्षमनीय है।

यह कि चुक हेतु क्षमा एवं अपील स्वीकार किये जाने के निवेदन हेतु शपथ पत्र प्रस्तुत है।

13 OCT 2023

सत्यापन

शपथकर्ता

15. As the facts and issues involved in the captioned appeal filed by the assessee remains the same as were there before me in the aforementioned ITA No.127/RPR/2023 for assessment year 2018-19, therefore, my order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeal in ITA No.128/RPR/2023 for A.Y. 2019-20. In this case also, I decline to condone the delay of 18 days and, thus, without advertng to the merits of the case dismiss the captioned appeal of the assessee as

barred by limitation as per observations recorded while disposing off the appeal in ITA No.127/RPR/2023 for A.Y. 2018-19.

16. In the result, the appeal of the assessee in ITA No.128/RPR/2023 for A.Y. 2019-20 is dismissed in terms of my aforesaid observations.

17. Resultantly, both the appeals of the assessee are dismissed in terms of the aforesaid observations.

Order pronounced in open court on 22<sup>nd</sup> day of November, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 22<sup>nd</sup> November, 2023.

SB

**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-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.