

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 728/Bang/2023
Assessment Year : 2019-20

The Deputy Commissioner of Income Tax, Circle – 7(1)(1), Bangalore.	Vs.	M/s. Visskan Aviation Pvt. Ltd., 104, Ground Floor, Kirloskar Colony, Mahalakshmpuram, Bangalore – 560 086. PAN: AACCV2564M
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Sridhar, CA
Revenue by	:	Shri V. Parithivel, JCIT DR

Date of Hearing	:	21-12-2023
Date of Pronouncement	:	18-01-2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the Department is directed against the order dated 13.07.2022 passed by the National Faceless Appeal Centre (NFAC), arising out of the order dated 17.05.2020 passed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by the ADIT, CPC, Bangalore for assessment year 2019-20.

2. At the very outset of the matter the learned counsel appearing for the assessee submitted before us that the

appeal is barred by limitation for 360 days and the explanation rendered by the Department for such delay is not sufficient enough to condone the same. On the other hand the learned department representative drew our attention to the application for condonation of delay dated 04.12.2023 where explanation has been made in support of the delay caused. He further relies upon the judgment passed by the Hon'ble Apex Court in the matter of Director of Income Tax (International Taxation) versus Western Union Financial Services Inc, reported in (2023) 153 taxmann.com 704(SC).

3. He therefore prays for condonation of the same and admit the appeal for consideration of the same on merit.
4. We have heard the rival submission made by the respective parties and we have also perused the relevant materials available on record including the application for condonation of delay dated 04.12.2023 filed by the DCIT, Circle 7(1)(1), Bangalore.
5. We have perused the order passed by the Hon'ble Apex Court. We find while condoning delay, the Hon'ble Apex Court was pleased to observe as follows:

"1. Leave granted.

2. We have heard learned panel advocate for the appellant and learned counsel for the respondents.

3. The grievance ventilated in these appeals is regarding the dismissal of the I.T.A. No. 141/2016 and Miscellaneous application(s) as well as analogous appeals filed before the Delhi High Court only on the ground of

inordinate delay of 1110, 1117 and 991 days respectively in refiling the said appeals. The High Court has observed that the explanation offered for the condonation of delay sought for by the appellant herein could not be accepted, as, for a long time the appeals were lying in defect and therefore could not be listed before the Court.

4. Learned counsel for the appellant submitted that as a result, the substantial questions of law raised by the Department in the said appeals have not been considered on merits which has caused prejudice to the Revenue. He therefore submitted that the impugned orders may be set aside and the matters may be remanded to the High Court by condoning the delay in refiling the appeals, so that the High Court could consider the cases on merits.

5. Per contra, learned counsel appearing for the respondents vehemently objected to the condonation of the delay of 1110, 1117 and 991 days respectively in refiling by this Court and permitting the matters to be heard on merits. He sought to contend that unnecessarily, the previous standing counsel of the Department has been blamed for the failure in refiling the appeals whereas that was not the case at all as the defects were not removed by the appellant.

6. However, we find that the High Court has not dealt with the appeals on merits and if the substantial questions of law are of significance then the High Court, in our view, ought to have condoned the delay in refiling the appeals and considered the cases on merits. We note that initially the appeals were filed in time. However, it is also an aspect to be noted that the delay of 1110, 1117 and 991 days respectively in refiling the respective appeals is considerable. Hence, we set aside the impugned orders and allow these appeals and restore the appeals before the High Court with cost of Rs. 50,000/- (Rupees fifty thousand only) to be paid by the appellant to the respondents in each of these appeals within a period of four weeks from today. It is needless to observe that unless the cost is paid to the respondent, the High Court on remand shall not take up the appeals for consideration on merits. The aforesaid, in our view, would subserve the interest of justice. Four weeks' time is granted from the date of the release of this order for removal of the defects in the appeals restored before the High Court.

7. Pending application(s), if any, shall stand disposed of."

6. Further, upon perusal of the application for condonation of delay dated 04.12.2023, we find that upon receipt of the order impugned, a scrutiny report was prepared and the same was forwarded to the concerned jurisdictional Principal Commissioner of Income Tax for a decision for filing appeal before us. Upon getting the authorization from the said officer, the appeal was filed through e-filing mode.
7. We find that no proper explanation of day to day delay has been drawn in such application filed by revenue. Needless to mention that it is the duty cast upon the officers to look into the matter, particularly the explanation rendered by the authorities below in support of the delay showing no deliberate latches or negligence on the part of the parties in preferring such appeal. We understand that sufficient cause should be understood in their proper spirit, philosophy and purpose, having regard to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation. However we do not find any proper/sufficient cause has been explained by the revenue in support of condonation of delay in filing the appeal before us. The power to condone delay is discretionary, contingent upon the sufficiency and acceptability of the explanation provided as the basic phenomenon. Thus the judgment relied upon by the Ld.DR finds no place in the instant case.
8. The issue, involved in this particular case relates to deduction in respect of employees' contribution to ESI and

since the assessee has made payment before the due date of filing of the return of income under section 139(1) of the Act, the relief was granted by the learned ADIT, CPC impugned before us. Due to inefficiencies on the part of the officers the appeal has been filed late, leading to the application for condonation of delay. Even such delay is not sufficiently explained. Thus under this present facts and circumstances of the case we do not find any merit in condoning the delay in filing the appeal before us by the revenue. This application for condonation of delay is thus dismissed.

In the result, the appeal preferred by revenue is dismissed.

Order pronounced in the open court on 18th January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(MADHUMITA ROY)
Judicial Member

Bangalore,
Dated, the 18th January, 2024.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore