

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1122/Kol/2023
Assessment Year: 2016-17

RITU DUGGAL 106/2, Karaya Road Kolkata - 700017 [PAN: ADRPD2477L]	Vs	Income Tax Officer, Ward - 29(1), Kolkata
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Miraj D. Shah, A/R	
Revenue by :	Shri Abhijit Kundu, CIT, D/R	

सुनवाई की तारीख/Date of Hearing : 20/12/2023
घोषणा की तारीख /Date of Pronouncement: 18/01/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, [hereinafter the "Id. CIT(A)"] dt. 24/03/2021, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2016-17.

2. The Registry has pointed out that there is a delay of 877 days in filing the present appeal by the assessee. The assessee has filed a petition for condonation of delay which is placed on record explaining the reasons for late filing of the instant appeal. The assessee has submitted that the assessee did not receive any notice of hearing from the Id. CIT(A) and was not aware of the appellate proceedings neither did she receive copy of the appellate order. It was only after receiving the notice u/s 221(1) of the Act on 30/08/2023 that the assessee became aware of the proceedings and that a penalty order has been

passed and then she contacted her counsel and was advised to file appeal before the ITAT. It is further submitted that the assessee did not have any *malafide* intention for not filing the appeal on time as she would not have gained anything from it. Finally, the assessee cited various judicial precedents for condonation of delay in cases where sufficient cause is explained for the delay in filing of the appeal.

2.1. After perusing the petition for condonation and hearing rival contentions, we are convinced that the assessee was prevented by sufficient cause from filing the appeal on time. Under these circumstances we deem it fit to condone the delay and admit the appeal for hearing. While doing so, we draw strength from the following judgments

(a) In the case of *Collector, Land Acquisition v. Mst. Kati Ji 1987*

(13) ALR 306, the Hon'ble Apex Court held as follows:

"The Legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice -that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy.

Any such a liberal approach is adopted on principle as it is realized that:

- 1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this; when delay is condoned, the highest that can happen is that a cause would be decided on merit after hearing the parties.*
- 3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
6. *It must be grappled that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

(b) In *N. Balakrishnan v. M. Krishnamurthy* [1998] 7 SCC 123 the Hon'ble Apex Court explained the scope of limitation and condonation of delay, observing as under:

"The primary junction of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy."

(c) In *Smt. Prabha vs. Ram Prakash Kalra* 1987 Suppl. SCC 339, the Supreme Court took the view that the Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay.

(d) In *Vedabai vs. Shantaram Baburao Patil* 2001 (44) ALR 577, the Hon'ble Apex Court made a distinction in delay and inordinate delay observing as under:

"In exercising discretion under section 5 of the Limitation Act, the Courts should adopt a pragmatic approach, 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

otherwise will be a relevant factor so the case calls for a more cautious approach..."

(e) In *New India Insurance Co. Ltd. v. Smt. Shanti Misra* AIR 1976 SC 237, Hon'ble Supreme Court held that discretion given by section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression 'sufficient cause' should receive a liberal construction.

(f) In *Brij Inder Singh v. Kanshi Ram* AIR 1917 PC 156, it was observed that true guide for a Court to exercise the discretion under section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.

(g) In *Shakuntala Devi Jain v. Kuntal Kumari* AIR 1969 SC 575, the Hon'ble Supreme Court held that unless want of bona fides of such in action or negligence as would deprive a party of the protection of section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

(h) In *O.P. Kathpatia v. Lakhmir Singh* AIR 1984 SC 1744, the Hon'ble Supreme Court held that if the refusal to condone the delay results in grave miscarriage of justice; it would be a ground to condone the delay.

(i) In *State of Haryana v. Chandramani* AIR 1996 SC 1623, Hon'ble Supreme Court considered large number of its earlier judgments including *Binod Bihari Singh v. Union of India* [1993] 1 SCC 572, *Shakambari & Co. v. Union of India* [1993] Suppl. (1) SCC 487, *Warlu v. Gangotribai* [1995] Suppl (1) SCC 37, *Ramlal,*

Motilal and Chhotelal v. Rewa Coalfields Ltd. AIR 1962 SC 361, Concord of India Insurance Co. Ltd, v. Nirmala Devi AIR 1979 SC 1666, Lala Mata Din v. A. Narayanan AIR 1970 SC 1953, and held that expression 'each day's delay must be explained', does not mean that a pedantic approach should be made and it must be applied in a rational commonsense pragmatic manner.

3. In view of the above discussion, the delay is condoned and the appeal is admitted for hearing on merits.

4. The sole grievance of the assessee in the instant appeal is the penalty confirmed by the Id. CIT(A) which has been imposed by the Id. Assessing Officer u/s 271(1)(b) of the Act of Rs.30,000/-. We find that the penalty was imposed on account of non-compliances on part of the assessee but the assessment order was framed u/s 143(3) of the Act which means that after the initial non-appearance, the assessee has subsequently co-operated in the assessment proceedings. Subsequently we notice that the assessee's mother expired on 28/08/2018 which was one of the reasonable cause for the alleged non-compliance during the course of assessment proceedings. Under these facts and circumstances, Section 273B of the Act comes to the rescue of the assessee which provides that no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure/non-compliance. Hence, we

delete the penalty imposed u/s 271(1)(b) of the Act and allow this appeal of the assessee.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 18th January, 2024 at Kolkata

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 18/01/2024

Sd/-

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata