

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA Nos.247 & 248/Ind/2023**  
**Assessment Years:2010-11 & 2012-13**

C.I. Builders Private Limited, 182, Zone-I, M.P. Nagar, Bhopal	<b>बनाम/ Vs.</b>	ACIT-1(2)/DCIT-1(1), Bhopal
(Appellant/Assessee)		(Respondent/Revenue)
<b>PAN: AABCC 6163 G</b>		
Assessee by	Shri Rakesh K. Mangal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.01.2024	
Date of Pronouncement	23.01.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-orders dated 31.12.2015 & 23.01.2017 passed by learned Commissioner of Income-Tax (Appeals)-1, Bhopal ["CIT(A)"], which in turn arise out of assessment-orders dated 18.03.2013 & 25.03.2015 passed by learned ITO-2(1) and DCIT-1(1), Bhopal ["AO"] for Assessment-Year ["AY"] 2010-11 & 2012-13 respectively u/s 143(3) of the Income-tax Act, 1961 ["the Act"], the assessee has filed the captioned two appeals.

2. The registry has informed that there is a delay of 7 years & 104 days and 6 years & 83 days in filing the captioned ITAs respectively; therefore these twin-appeals are time-barred. Ld. AR for assessee submitted that the assessee has filed an application for condonation of delay accompanied by assessee's affidavit as well as a supportive affidavit of previous counsel (Shri Ashwini Rinwa, Advocate) in both matters. The contents of these documents are identical in both appeals. Therefore, we are re-producing below the assessee's condonation-application and previous counsel's affidavit as filed in first appeal being ITA No. 247/Ind/2023 of AY 2010-11:

**C.I. Builders Private Limited, Bhopal**  
**ITA Nos. 247 & 248/Ind/2023 A.Y.2010-11 & 2012-13**

30 JUN 2023

To,  
The Income Tax Appellate Tribunal,  
Indore Bench,  
Indore

**Appellant: CI Builders Private Limited, Bhopal (PAN: AABCC6163G)**

Subject: Application for condonation of delay in filing of appeal for the AY 2010-11

Respected Sir,

Your appellant is a private limited company, received an assessment order U/s 143(3) of the Income Tax Act, 1961 Dt – 18/03/2013. Aggrieved from the order of the learned A.O., the appellant company had filed an appeal before Ld. CIT(A). Further, The Ld. CIT(A) has passed an ex-party order Dt – 31/12/2015 which was served on 20/01/2016 but no appeal could be filed for the following reasons:-

- i) The Appeal Order was given to our counsel for taking appropriate action by making appeal before the Hon. ITAT but there is a lapse on part of the previous counsel of the appellant company. The previous counsel of the appellant company has neither appeared for the proceedings of the appeal before the Ld. CIT(A) nor filed any submission before him.
- ii) That the fact that the appeal against the order of the Ld. CIT(A) has not been filed is came to the knowledge of the appellant company when the order of the penalty proceedings U/s 271(1)(c) of the Income Tax Act, 1961 was also passed as ex-party on 08/05/2023 by Ld CIT(A), NFAC. Now our all cases are taken care of by our new counsel. Both the appeal have been decided as Ex-party.
- iii) The result mistake of the counsel should not be borne by the appellant company and by principal of natural justice an opportunity of hearing may be provided to the appellant company.
- iv) A chalan No 03624 of Rs. 500/- as fee paid on 28/06/2023 is submitted herewith.

Further, the appellant company is relied upon the following judgements:

- a) Hon. Supreme Court in case of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi (SC) : (1979) 118 ITR 0507 it was held that *“legal advice tendered by a professional and litigant acting upon it one way or other could be sufficient cause to seek condonation of delay and coupled with other circumstances and factors for applying liberal principles and then said delay can be condoned”*

- b) Hon. High Court, Bombay in case of Vijay Vishin Meghani v. Deputy Commissioner of Income-tax ((2017) 251 TAXMANN 270) were the Hon. High Court has condone the delay in filing of appeal of 2984 days.
- c) Hon. ITAT, Delhi in case of Oracle India Pvt Ltd vs. Deputy Commissioner of Income Tax (2008) 13 DTR 371 were it was held that *"reasonable cause — delay of 1297 days in filing appeal being on account of lapse on the part of consultant and not being malafide, there was valid reason warranting condonation of delay and admission of appeal"*

Therefore, on the basis of above facts and relying upon the above judgements the appellant company request to your honor the kindly condone the delay in filing of appeal and the appeal may be heard on the basis of merits.

Prayed accordingly.

For C I Builders Private Limited  
For C.I. BUILDERS PVT.LTD.



DIRECTOR  
Rakesh Malik  
(Director) Appellant

**AFFIDAVIT**

I, Advocate Ashwini Rinwa, S/O. Late shri R.A. Rinwa, Aged about 68 years R/O at Ho. No. 30, Mahadev Mandir Road, Behind Sindhi Market, Peerget, Bhopal, Madhya Pradesh do hereby affirm on oath: -

1. That i am practicing as a Tax Consultant established at Bhopal & I have been in practice for the last 35 years.
2. That i represented the Income Tax proceedings for A.Y. 2010-11 of M/S. CI Builders Private Limited, Bhopal before the ACIT & Commissioner Appeals, Bhopal.
3. That the tax Appeal of the assesses was filed by me before the CIT(A), Bhopal and the same has been decided as an ex-party due to non-appearance.
4. That order of appeal was handed over to me for filing of second appeal before the Hon. ITAT Indore. Which was given to office staff for preparation and submission before the Hon. ITAT, Indore, but due to ignorance on part of our staff. The appeal could not be filled on time. The staff who was taking care of all matters of CI Builders Private Limited is no longer associated with us and left our service without updating the pendency.

In view of the above facts, the appeal could not be filled from our office.

  
Deponent

**VERIFICATION**

I, Advocate Ashwini Rinwa, S/O. Late shri R.A. Rinwa, Aged about 68 years R/O at Ho. No. 30, Mahadev Mandir Road, Behind Sindhi Market, Peerget, Bhopal, Madhya Pradesh, do hereby affirm that the contents of this affidavit are true and correct to the best of my knowledge.

  
Deponent

Date & Place: \_\_\_\_\_ at Bhopal

3. Ld. AR firstly carried us to the above condonation-application according to which the assessee handed over the impugned orders to his previous counsel for filing appeals before ITAT but there was a lapse on the part of previous counsel in not only filing appeals. Ld. AR submitted that the previous counsel did not even make appearances before CIT(A) in first-appeals which has led to passing of ex-parte orders by CIT(A). Then, Ld. AR carried us to the above affidavit of previous counsel Mr. Ashwini Rinwa, advocate to demonstrate that in Para 2 of affidavit, the counsel has averred that he was dealing assessee's income-tax affairs and Para 4, he has further averred that the impugned order was handed over to him for filing appeal before ITAT; that he gave order to office staff for preparation and submission of appeal but due to ignorance on the part of his staff the appeal could not be filed in time; that the concerned staff is no longer associated with him and left service without updating the pendency. Thus, Ld. AR submitted, the assessee has taken all steps to file these appeals in time through his counsel but due to lapse on the part of counsel, the appeals could not have been filed. Ld. AR submitted that the delay is solely attributable to counsel and not to assessee. He submitted that counsel's lapse constitutes a "sufficient cause". He submitted that it is only when the assessee received orders dated 08.05.2023/11.05.2023 of CIT(A) in connected penalty matters u/s 271(1)(c) and consulted with a different counsel for filing of appeals in penalty matters that the assessee came to know that the counsel had not filed appeals against impugned orders. Immediately thereafter, the assessee

arranged to file these appeals on 03.07.2023 alongwith appeals in penalty matters. Thus, there is no lethargy or negligence on the part of assessee in making delay in filing present appeals. Relying upon decisions in *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmla Devi (1979) 118 ITR 507 (SC)*, *Vijay Vishin Meghani Vs. DCIT (2017) 251 Taxmann 270 (Bombay HC)* and *Oracle India Pvt. Ltd. Vs. DCIT (2008) 13 DTR 372 (ITAT, Delhi)*, Ld. AR prayed to condone the delay in present matters. During arguments, when the Bench raised a pointed query to Ld. AR as to the period upto which the previous counsel handled assessee's tax matters, Ld. AR asserted standing at the Bar that he worked till the year 2020.

4. Per contra, Ld. DR for revenue strongly opposed assessee's prayer with following contentions:

- (i) He submitted that there is a delay of 7 years & 104 days in one case and 6 years & 83 days 7 years in other case. He described these delays as "inordinate long delays". He submitted that the law mandates filing of appeal within a prescribed period only and even one day delay is objectionable. He submitted that small delay of a few days or even a few months can be condoned on sufficient cause being shown but the revenue is seriously against condonation of several years as has happened in present cases.
- (ii) Referring to Para 1 of affidavit of counsel, he submitted that the Counsel is stating to be in professional practice for last 35 years

which shows that the counsel is not a novice, he is a well experience professional. Referring to Ld. AR's assertion, he submitted that the previous counsel was regularly handling assessee's matters uptill the year 2020. In such a situation, how can it be accepted that the present matters which required filing of appeals in the year 2016/2017 could not be taken care of by counsel for several years?

- (iii) He submitted that the assessee has pushed the delay on previous counsel and the previous counsel has pushed on his "unnamed" staff who has left service. He submitted that the explanation offered is itself not credible.
  
- (iv) He submitted that the assessee is a company and not an individual. The assessee has all staff at its command to monitor and take care of even minute happening. He invited our attention to the bottom of first pages of impugned orders filed by assessee and showed that the staff of assessee has even noted the date of receipt of impugned orders by way of a seal according to which the impugned orders dated 31.12.2015 & 23.01.2017 were received on 20.01.2016/4:30 P.M. & 13.02.2017/3:15 P.M. respectively. The pages referred by Ld. DR are scanned and re-produced below for an immediate reference:



LT.N.S.: 55

GOVERNMENT OF INDIA  
OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS) - 1,  
BHOPAL (M.P.)

DATE OF ORDER: 31/12/2015 ✓  
APPEAL No.: CIT (A) -1/BPL/IT-108/13-14

Instituted on 17.04.2013 from the order of the ACIT-1(2), Bhopal

1. PAN	:	AABCC6163G
2. Assessment Years	:	2010-11
3. Name and Address	:	C I Builders Pvt. Ltd., 182-Zone-I, M.P. Nagar, Bhopal
4. Income assessed	:	Rs. 1,39,52,840/-
5. Tax/Penalty levied	:	Rs. 60,46,150/-
6. Section of the order	:	U/s 143(3) of the Income Tax Act,1961
7. Date (s) of hearing	:	As per order sheet
8. Present for hearing	:	None
9. Present for department	:	None

APPELLATE ORDER AND GROUNDS OF DECISION

This appeal has been filed against assessment order u/s 143(3) of the Income-Tax Act, 1961 (the Act) dated 18.03.2013 for A.Y. 2010-11 passed by ACIT-1(2) Bhopal.

2. The appellant has taken following grounds of appeal which are as under:


1. That the addition of Rs. 59,23,003/- for low Net-Profit be held to be highly unjustified and bad on the facts and in the circumstances of the case and be quashed and deleted.
2. That the disallowance of deduction claimed u/s 80-1B (10) at Rs. 3,75,013/- be held to be bad and unjustified when all details and evidences in support of the said claim had been placed on record of the learned ACIT including the completion certificate and the appellant's



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CI Builders (F  
182, Zone-I, M.P. Nagar

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**GOVERNMENT OF INDIA**  
**OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS) - 1**  
**BHOPAL (M.P.)**

DATE OF ORDER: 23/01/2017  
APPEAL No.: CIT (A)-1/BPL/IT- 157/2015-16

Instituted on 27/04/2015 from the order of the DCIT-1(1), Bhopal


1. PAN	:	AABCC6163G
2. Assessment Year	:	2012-13
3. Name and Address	:	C.I. Builders Pvt. Ltd, 182, Zone-I, M.P. Nagar, Bhopal
4. Income assessed	:	Rs. 93,01,663/-
5. Tax/Penalty levied	:	Rs. 17,05,800/-
6. Section of the order	:	U/s 143(3) of the Income Tax Act, 1961
7. Date (s) of hearing	:	As per order sheet
8. Present for hearing	:	None
9. Present for department	:	None


**Appellate Order u/s 250(6) of the Income Tax Act, 1961**

This appeal has been filed against assessment order u/s 143(3) of the Income Tax Act, 1961 (the Act) dated 25/03/2015 for A.Y. 2012-13 passed by DCIT-1(1), Bhopal (A.O.). The appellant has taken nine grounds of appeal.

2. The brief facts of the case as per the assessment order are that the appellant had filed return of income for A.Y. 2012-13 on 30.09.2012 declaring total income at Rs.2,95,550/-. The appellant is a builder and developer and engaged in the business of real estate. The A.O. has made additions in the assessment order as under:

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CI Builders (P) Ltd.  
182 Zone-I, M.P. Nagar, Bhopal  
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Ld. AR submitted that despite such robust systems in assessee-company, it is quite strange that the assessee did not enquire status of appeals from counsel. This shows that the assessee is grossly negligent when it comes to deal with judicial system.

- (v) He submitted that it is not a lapse of the counsel alone, the assessee has also contributed in making delay. He submitted that the assessee has filed appeals of other assessment-years, namely AY 2011-12 and 2013-14, to ITAT, Indore Bench in ITA No. 333 & 334/Ind/2022 against orders dated 15.07.2022 of first-appellate authority on 07.09.2022 whereas the present appeals of AY 2010-11 and 2012-13 have been filed on 03.07.2023. Even at the time of filing appeals of those other years, the assessee did not take care to see the status of present-appeals and at least a delay of 10 months from 07.09.2022 to 03.07.2023 is directly due to sheer negligence of assessee. Therefore, the assessee does not deserve any sympathy.
- (vi) Lastly, he relied upon decisions in ***Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya Vs. CIT (2020) 119 taxmann.com 383 (SC)*** and ***Royal Stiches (P) Ltd. Vs. DCIT (2023) 156 taxmann.com 361 (Madras HC)*** and also filed copies of orders immediately after conclusion of hearing, acknowledged by Inward Entry No. 1725 by the office of ITAT, to show that the courts have rejected condonation in such cases.

5. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. We are aware of section 253(5) of the Act which empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a "sufficient cause" for not presenting appeal within prescribed time. We are also conscious of the landmark judgement of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** holding in favour of condonation of delay in appropriate situations. But it is also true that the condonation request has to be dealt with great caution and care and it should not result in giving concession to an erring assessee. In the present case, though the assessee is claiming that the delay in filing has occurred solely due to lapse of counsel but the fact is that the assessee has also contributed to a large extent in the process of delay. As can be seen from Ld. DR's arguments that the assessee has filed appeals of other two years i.e. AY 2011-12 and 2013-14 on 07.09.2022 and even at that stage, had not taken care to enquire and see the status of present appeals. This clearly shows lethargic attitude of assessee. In ***Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya Vs. CIT (2020) 119 taxmann.com 383 (SC)*** relied upon by Ld. DR, the Hon'ble Supreme Court has dealt an identical situation, the relevant paragraphs of the order while emphasizing the crux are extracted below:

*"4. The prayer for condonation of delay is seriously opposed by learned counsel for the revenue. It is submitted that the delay is not of few days or months but is of more than four and half years. No explanation to the delay to justify its condonation has been given. If Late Padam Prakash Singh was*

*managing the legal affairs of the assessee, then also there is nothing on record to show that he was not keeping well so as to take a decision for filing of appeal for the years together. He died in the month of November, 2017 whereas copy of the order was obtained on 10-3-2014. Even after the death of Manager, no steps were taken thereupon also to file an appeal immediately but it was filed in the year 2019 i.e. after one and half years of the death of Late Padam Prakash Singh. No satisfactory explanation to it has been given and there is nothing on record to show that Late Padam Prakash Singh was not keeping well and thereby not in a position to initiate action for filing of the appeal. The contents of the application are quite vague thus, delay of more than four and half years in filing the appeal may not be condoned.*

*5. We have considered the rival submission of the parties and perused the record. It is a fact that Income Tax Appellate Tribunal passed the impugned order on 28-2-2014. The period for filing the appeal was expired on 8-7-2014. The appeal has been preferred on 17-4-2019. The main excuse of delay in filing of appeal is in reference to the Manager, who said to be suffering from many ailments. There is nothing on record to show that Late Padam Prakash Singh was suffering from ailments and was such an ailment which did not permit him to take initiative for filing of appeal. **It was otherwise duty of the assessee to watch the affairs of its firm and in any case, Late Padam Prakash Singh died on 22-11-2017. At least thereupon, the assessee was expected to file appeal immediately but it was filed almost after one and half years.** The delay in filing the appeal is not of few days or months but is of more than four and half years.*

*6. Taking note of the aforesaid, we do not find any ground to condone the delay. Accordingly, the application for condonation of delay is dismissed."*

***[Emphasis supplied]***

6. The grossly negligent attitude of assessee is further discernible from one more fact. As can be seen from first pages of impugned orders reproduced earlier in Para No. 4(iv) of this order, the assessee received impugned orders on 20.01.2016 and 13.02.2017. Thus, when the assessee received later order on 13.02.2017, wasn't it a duty of assessee to enquire from his counsel about filing status of appeal against former order received on 20.01.2016? Had the assessee exercised any care at that stage itself, he would have not only rushed to file appeal against impugned order dated

20.01.2016 with a smaller delay but also could ensure timely filing of appeal against order dated 13.02.2017. However, the assessee did not exercise any such care even at stage and only continued with its negligent or lethargic attitude. Therefore, the assessee is also a contributor in causing delay in filing. In recent judgement dated 21.09.2023 in **Royal Stiches (P) Ltd. Vs. DCIT (2023) 156 taxmann.com 361 (Madras HC)** relied upon by Ld. DR, the Hon'ble High Court held thus:

*"5. We are not convinced with the reasons adduced in the affidavits filed in support of these petitions for condoning the inordinate delay of 1072 days. It is trite law that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In this connection, reference may be made to the following decisions of the Hon'ble Supreme Court:*

**(a) Basawaraj Vs. Land Acquisition Officer (2013) 14 SCC 81:**

*"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336], Mata Din v. A. Narayanan[(1969) 2 SCC 770], Parimal v. Veena [(2011) 3 SCC 545] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157].)"*

**(b) Ajay Dabre Vs. Pyare Ram 2023 SCC Online SC 92:**

'13. This Court in the case of *Basawaraj v. Special Land Acquisition Officer* while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.'

Thus, it is crystal clear from the above legal proposition that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party. In the present case, the petitioner/appellant has not given 'sufficient cause' for condoning the huge delay of 1072 days in filing the appeals.

6. It is also to be pointed out that the appeals were filed along with condone delay petitions in the year 2012 itself. By order dated 14-9-2012, notice was ordered to the respondent in the condone delay petitions. Subsequently, on two occasions, in March, 2015, the matter stood adjourned for filing counter by the respondent. Thereafter, nothing moved and the appellant has not taken any step to follow up the same, till June 2023. Now, they suddenly woke up from slumber like Rip Wan Winkle and prayed to condone the delay in filing the appeals. Such callous and lackadaisical attitude on the part of the appellant, cannot be countenanced by this court. The Supreme Court in *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project* [(2008) 17 SCC 448], observed that the courts help those, who are vigilant and "do not slumber over their rights". Therefore, we are not inclined to condone the delay of 1072 days in filing the appeal."

Hence, the Ld. DR is very much correct in submitting that the assessee does not deserve any sympathy in present cases. Needless to mention that there is a whopping delay of more than 7 or 6 years. Consequently, we are inclined to reject the assessee's condonation prayer and dismiss these appeals as being time-barred.

**6. Resultantly, these appeals are dismissed.**

Order pronounced in open court on 23.01.2024.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 23.01.2024.

CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore