

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

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

I.T.A. No. 1249/Kol/2023
Assessment Year: 2019-20

Avishi Projects LLP C/o. M/s. Salarpuria Jajodia & Co. 7, C.R. Avenue 3 rd Floor Kolkata - 700072 [PAN: ABAFA7903M]	Vs	ADIT, CPC, Bangalore
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S. Jhajharia, A/R
Revenue by :	Shri Vineet Kumar, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 18/01/2024
घोषणा की तारीख /Date of Pronouncement: 31/01/2024

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. 21/03/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2019-20.

2. The Registry has pointed out that there is a delay of 551 days in filing the present appeal by the assessee. The assessee has filed a petition for condonation of delay supported by an affidavit which reads as under:-

"I, Aditya Banka son of Ram Niranjana Banka, having address at 33A J.L. Nehru Road, Kolkata – 700 071, being the designated Director of AVISHI PROJECTS LLP(hereinafter referred to as "the partnership") having Registered Office at 33A J.L. Nehru Road, Kolkata - 700 071 , do hereby Solemnly affirm that -

1. That, the Partnership have preferred an appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata in ITA No. 1249/Kol/2023;

2. I do hereby submit that - that against the intimation u/s 143(1) for A.Y 2019-20 the Partnership had filed an appeal before CIT(A) on 27.6.2020 and such appeal so filed later migrated to CIT(A), NFAC vide Notification No 76/2020 dt. 25.9.2020 [F.No.370142/33/2020 -TPL/503296(E)].

3. That the Learned CIT(A), NFAC had passed an order on 21.3.2022 treating the appeal so filed as infructuous on the premises that subsequently an order u/s 154 has been passed and such order u/s 154 subsumed the intimation u/s 143(1) against which the appeal.

4. However, the aforesaid order of Ld. CIT(A), NFAC was not received by the Pi the Income Tax Department by e-mail or otherwise, and on checking the status filed in November 2023, the said order of CIT(A), NFAC dated 21.3.2022 came to the knowledge of the appellant and thereafter the same was downloaded from e-portal of IT Department.

5. On discovering such order by Ld. CIT(A), NFAC which was dt. 21.3.2022 the Partnership « approached its tax consultant and realized that the time limit for filing appeal against such order of Ld.CIT(A), NFAC had passed long back.

6. The appellant is aggrieved by order of Ld CIT(A), NFAC and hence this appeal is being filed now i.e. after delay of 610 days (60 + 550) days. Since the delay is unintentional and there is a reasonable cause for such delay in filing such appeal, hence delay of 610 days may kindly be condoned.

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for condoning the delay. The facts and circumstances elucidated in the accompanying application involves the question of "substantial justice", where gross delay of 610 days, deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay is being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the appellant.

VERIFICATION

I, Aditya Banka son of Ram Niranjana Banka, having address at 33A J.L. Nehru Road, Kolkata - 700071, being the designated Director of AVISHI PROJECTS LLP having Registered Office at 33A J.L. Nehru Road, Kolkata - 700 071, do hereby verify that the contents from paragraphs 1 to 6 are correct

and true to the best of my knowledge and belief.

Affirmed at Kolkata this 17th day of January 2024.

For & Behalf of Aditya Banka
Sd/-
(Authorised Signatory)

3. A perusal of the reasons for late filing of the instant appeal reveals that the assessee partnership firm was not in receipt of the order of the Id. CIT(A) and hence was not able to file this appeal on time. 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 grapped 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 *Briji 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.

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

5. At the outset, the Id. Counsel for the assessee submitted that credit of tax deducted at source (TDS) and tax collected at source (TCS), was not allowed in the return processed u/s 143(1)(a) of the Act against which the assessee has filed the instant appeal. The assessee had also filed application u/s 154 of the Act which was also disposed against the assessee. However, the appeal against the order u/s 143(1)(a) of the Act was still alive. The Id. CIT(A) without adjudicating the issues on merits has merely dismissed the appeal observing that since the rectification order u/s 154 of the Act has been passed, the intimation u/s 143(1)(a) of the Act, has got subsumed and merged and the appeal of the assessee has become infructuous. Prayer was made to restore the issues to the file of the Id. CIT(A) for adjudication on merits.

The Id. D/R, on the other hand, vehemently argued supporting the orders of the Id. CIT(A).

6. We have heard rival contentions and perused the material placed before us. We find that the in assessee's appeal u/s 143(1)(a) of the Act, the assessee has challenged the issue of non-grant of TDS & TCS credited by the CPC. However, the Id. CIT(A) without dealing with the merits of the case has dismissed the assessee's appeal merely

on the ground that the application u/s 154 of the Act stands disposed off. We do not find any merit in this finding of the Id. CIT(A) since the proceedings carried out in the form of filing of appeal against order u/s 143(1)(a) are separate to that of the proceedings carried out u/s 154 of the Act and even if the application u/s 154 of the Act was disposed off but still the appeal against the 143(1)(a) of the Act was alive. The Id. CIT(A) ought to have dealt with the issue on merits. Under these given facts and circumstances, we deem it appropriate to restore the issues raised on merits in the appeal filed against the order u/s 143(1)(a) of the Act to the Id. CIT(A). Needless to say that CIT(A) will give proper opportunity of hearing to the assessee to present its case.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 31st January, 2024 at Kolkata

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 31/01/2024
SC S.P.

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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