

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2208/DEL/2023
Assessment Year 2015-16

M/s Microtek Balaji Powertronics Private Limited (Formerly Known as Balaji Powertronics) Udhyog Nagar, Main Rohtak Road New Delhi-110 041	Vs.	ACIT Circle-42(1) Delhi
TAN/PAN: AAOCM8964A		
(Appellant)		(Respondent)

Appellant by:	Ms. Aabgina Chishti, Advocate Sh. Gaurav Sachdeva, CA		
Respondent by:	Sh. Subhra Jyoti Chakraborty, CIT-DR		
Date of hearing:	07	03	2024
Date of pronouncement:	13	03	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) passed u/s 250 of the Act dated 10.07.2023 arising from Assessment Order passed u/s 143(3) of the Act dated 27.12.2018 for the Assessment Year 2015-16 in question.

2. The assessee has raised several grounds to assail the first appellate order at the assessment order. One of the foremost ground relates to summary dismissal of appeal by the CIT(A) on account of delay in filing appeal before him.

3. The Ld. Counsel for the assessee pointed out that the Ld. CIT(A) has declined to condone the delay of 1441 days in filing appeal. The Ld. Counsel pointed out that having rejected the petition for condonation of

delay, the appeal has not been adjudicated on merits and dismissed *in limine*.

3.1 In the context, the Ld. Counsel iterated that the delay of 725 days have occurred due to lack of awareness on the part of the assessee towards remedial action available against the assessment order in view of the change of the Income Tax Consultant and remaining period of 716 days delay is attributable to ongoing Covid-19. As regards pre-covid delay, the Ld. Counsel pointed out that it is only when a new Income Tax Consultant was appointed to review the tax record of the previous consultant, it came to the light that new consultant has not taken any remedial action or filed any appeal against the summary assessment passed by the Assessing Officer.

3.2 The Ld. Counsel pointed out that the assessee has duly complied with the proceedings before the AO and also placed its submissions from time to time as observed in the para-6 of the Assessment Order. The Ld. Counsel thus submitted that the bonafides in the conduct of the assessee is a matter of record and assessee could not be branded as a habitual defaulter. The Ld. Counsel submitted that delay occurred is not intentional or deliberate and the delay occurred has not caused any prejudice to the Revenue *per se*. No malafide can be imputed for such delay. The Ld. Counsel referred to the decision rendered by the Hon'ble Supreme Court in the case of *Collector of Land Acquisition vs. Mst. Katiji & Ors, 167 ITR 471 (SC)* to contend that the substantial justice deserves to be preferred over the technical glitch committed by the assessee in belated filing in the facts of the case.

4. On merits, the Ld. Counsel submitted that the AO has made certain adjustments to the claim of wages and bonus expenses and reduced deduction under section 80IC artificially resulting in addition of Rs.13,43,123/- to the returned income of the assessee. The action of the Assessing Officer is *de hors* the facts on record and guided by misappreciation of facts and circumstances. The Ld. Counsel thus sought

suitable relief in the matter.

5. The Ld. DR for the Revenue, on the other hand, submitted that assessee does not deserve condonation of delay on such vague explanation. The Ld. DR relied upon the first appellate order and submitted that no interference with the order of the Ld. CIT(A) is called for.

6. From the conspectus of the circumstances, we are of the view that the assessee has demonstrated the circumstances resulting in delay in filing the captioned appeal in question. Needless to say, there can be no straight jacket formula to come to conclusion as to whether the sufficient and good grounds have been made out or not while seeking condonation of delay. We do not see any malafide written large on the conduct of the assessee for alleged delay. It is trite that an attempt should also be made to allow the matter to be contested on merits rather than to throw it out on such technicalities. Apart from the above, the assessee does not stand to gain in any manner whatsoever by not filing appeal within the period of limitation. Keeping in view the diligent attendance in the assessment proceedings, one cannot say that the assessee had been callous and negligent in prosecuting the matter.

7. At this point, reference is made to the decision of the Hon'ble Supreme Court in Improvement Trust Vs. Ujagar Singh, (2010) 6 SCC 786 (SC) and Bombay Mercantile Co-op. Bank vs. CBDT (2010) 45 DTR 377 (Bom) for the proposition that in the matter of condonation of delay, a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities. The test of 'sufficient cause is purely an individualistic test. It is not an objective of test as observed by the Hon'ble Bombay High Court in the case of Vithhal Dhondiba Chawan vs. Madhav Rao (Bom) Civil Application No.9464 of 2008 judgment dated 06.082009.

8. While considering the bonafides of the delay, an adjudicating authority is expected to bear in mind the principles laid down by Hon'ble Supreme Court in the locus classicus case of Collector of land acquisition vs. Mst. Katiji & Ors. 167 ITR 471 (SC). The Hon'ble Supreme Court laid down the guiding principles for adopting a liberal approach in the matter of condonation of delay. The principles laid down by the Hon'ble Court are reproduced hereunder:

"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 merits after hearing the parties.

1. "Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

3. "Every day's delay must be explained" does not mean that pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense 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 serious risk.

6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

9. The principles enunciated by the Hon'ble Courts say it all.

10. In the light of facts and circumstances narrated hereinabove, we direct the CIT(A) to condone the delay occurred in filing the appeal before it and admit the appeal for adjudication on merits in accordance with law. Accordingly, the captioned appeal is restored to the file of the

CIT(A) for de novo adjudication on merits in accordance with law after giving fair opportunity to the assessee.

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

Order pronounced in the open Court on 13/03/2024

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **13/03/2024**

Pramod

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar