

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.277/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Narayan Chandra Lenka, Balavadrapur, Chhatrabazar, Cuttack-753012	Vs	Pr.CIT, Bhubaneswar-1
PAN No. :AEZPL 6761 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri P.R.Mohanty, Advocate
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	24/04/2024
घोषणा की तारीख/Date of Pronouncement	:	24/04/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order dated 02/03/2022, passed by the Pr.CIT, Bhubaneswar-1 in DIN & Order No.ITBA/REV/F/REV5/2021-22/1040278402(1) for the assessment year 2017-2018.

2. Ld. AR vehemently argued that the order passed u/s.263 of the Act is invalid and is liable to be quashed. On this point, it was informed to him that the appeal of the assessee is delayed by 461 days and that his condonation petition is not giving any valid reason, though an affidavit has been filed in this regard by the assessee. The reasons given in the petition is extracted hereinbelow :-

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

In the Matter of : NARAYAN CHANDRA LENKA.
BALAVADRAPUR, CHHATRABAZAR,
A D MARKET, CUTTACK-753012.
PAN- AEZPL6761Q.

AND

In the Matter of Petition for condonation of delay in filing
appeal against order dated 02/03/2022
passed U/s 263 by the PCIT,
Bhubaneswar-1 for the Assessment
Year 2017-18.

MOST RESPECTFULLY SHEWETH :

1. That the appellant above named has filed an appeal before your Honour, challenging the impugned Appellate order passed by the PCIT, Bhubaneswar-1, U/s 263 on dated 02/03/2022.

2. That, the revision order was received by the assessee appellant on 22nd Mar, 2022 and as such the appeal should have been filed on or before 21st May, 2022 but due to the on line service of notice, consequential orders and non-verification of Income Tax Portal on regular basis coupled with negligence or inaction or misdemeanour i.e. laches & lapses of the authorised representative the appeal could not be filed in due time. Consequently resulting in a delay of 446 days which is neither intentional nor deliberate but due to unfortunate and unavoidable circumstances beyond control of the appellant and the delay may kindly be condoned as the appellant neither acted deliberately nor in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation.

3. That, the law of limitation is founded on public policy. The idea behind the law of limitation is not to destroy the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The objective of the law of limitation is to keep alive the legal remedy within a prescribed limited time but does not restrict courts to condone the delay in the interest of Justice.

4. That, when substantial justice and technical considerations are pitted against each other, 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. That, the delay is also attributable to online compliance of faceless regime where inadequately educated appellants not being computer savvy suffer even if assisted by authorized

representatives and therefore your good office is prayed and requested to kindly condone the delay in filing this appeal and adjudicate the same on merit and for which act of your kindness the appellant assessee will remain indebted and forever obliged.

6. That the delay in filing this appeal is neither deliberate nor intentional but due to circumstances beyond the control of the appellant.

PRAYER

In view of the above stated facts under the circumstances, the appellant prays before your Honour for condonation of delay and acceptance of the appeal for consideration on merit, for which act of your kindness the appellant as in duty bound shall ever pray.

*Date: 24-08-2023
Place: Cuttack*

*By the Appellate through
Advocate*

3. The claim given by the assessee is that there was non-verification of the income tax portal on regular basis coupled with negligence or inaction or misdemeanor i.e laches & lapses of the authorised representative. No affidavit in support of this has been submitted from any of the authorized representatives. Though the Id. AR has been vehemently arguing that the order passed u/s.263 of the Act was unsustainable in law, however, a perusal of the order passed u/s.263 of the Act also shows in para 4.1 that multiple notices were issued through the ITBA has also gone unrepresented. It was then pointed out to the Id. counsel that when notice of hearing has been given to the assessee and the assessee does not give any response to such notices, it would be an absolute injustice in quashing such orders of the officers especially when their hands have been tied without any cooperation of the assessee. This being so, though there has been continuous objections raised by the Id.

counsel of the assessee, we are left with no other alternative but to dismiss the appeal of the assessee on the following grounds :-

- i. the reasons for the delay have not been supported by necessary evidence; and
- ii. because of non-cooperation before the Id. Pr.CIT, Bhubaneswar-1.

4. It may also be mentioned here that consequential order has been passed in respect of the order passed u/s.263 of the Act and the appeal has also been filed against such consequential order before the Id. CIT(A). Thus, alternative remedy has already been initiated. In view of the above, appeal of the assessee is dismissed.

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

Order dictated and pronounced in the open court on 24/04/2024.

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 24/04/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Narayan Chandra Lenka,
Balavadrapur, Chhatrabazar,
Cuttack-753012
2. प्रत्यर्थी / The Respondent-
Pr.CIT, Bhubaneswar-1
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack