

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 632/Kol/2023
Assessment Year: 2011-12**

***Vedansh Traders Private Limited.....Appellant
[PAN: AAACV 8876 C]***

Vs.

ITO, Ward-13(1), Kolkata.....Respondent

Appearances:

Assessee represented by: None.

Department represented by: Monalisha Pal Mukherjee, JCIT.

Date of concluding the hearing : April 18th, 2024

Date of pronouncing the order : April 29th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2011-12 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-19, Kolkata [in short Id. 'CIT(A)'] dated 16.10.2019 arising out of the assessment order framed u/s 143(3) of the Act dated 30.03.2014.

2. None appeared on behalf of the assessee. The Id. D/R submits that the present appeal is time barred by the law of limitation as there is a delay of 1288 days in filing the appeal and there is no cogent explanation in the affidavit.

3. We have perused the record and find that the appeal has been filed on 28.06.2023 against the order passed on 16.10.2019. Admittedly, there is a delay of 1288 days in filing the appeal.

4. The Hon'ble Apex Court in catena of decisions has held that the law of limitation being substantive, the power of discretion to condone the delay is to be exercised judiciously and cannot be exercised in a routine manner. The parties are expected to approach the Court in adherence to the law of limitation. Thus, filing an appeal is the rule and condoning the delay is the exception, wherein the Courts has to exercise its discretionary power judiciously and by recording reasons. Unexplained delay cannot be condoned. Such unexplained delay is to be construed as an uncondonable delay. Consequently, uncondonable delay cannot be condoned at all. Once there is a delay, the person who is filing the condonation petition is expected to furnish the reason which must be accepted to the Court.

5. In the event of no reason, the Court cannot condone the delay in a mechanical manner, so as to pave way for prolongation and protection of the litigation between the parties and such prolongation causes prejudice to either of the parties. Thus, the Court must be cautious while condoning the delay and the power of discretion is to be exercised so as to ensure that no prejudice would be caused in the event of condoning such a delay to either of the parties.

6. In the above settled principle of law, we have perused the affidavit filed in support of the delay. It reveals to us that there are following two grounds which read as follows:

“i) Disputes were going on between the management of the appellant company and management and employees of the appellant company, from before the date of filing of appeal, as a result the hearing of the appeal could not be complied at the first stage of appeal.

ii) Subsequently with the outbreak of Covid-19 had delayed in filing Form 36 till 30/07/2021, the files containing all papers of this case got misplaced during the said period of Covid-19 outbreak period and it could not be traced then. We had filed grievance on 10/06/2022 seeking Assessment Order

u/s 143(3) as it is required for filing Form 36 and then the grievance was resolved on 21/10/2022.”

7. On perusal of the grounds it reveals to us that the first ground taken by the assessee that disputes were going on between the management of the appellant company and the employees of the appellant company. The ground does not impress us to condone such a long delay. The second ground, it admits of no doubt that there was a pandemic period but pandemic started in the year 2020 and it ends in the year 2021. Perusal of the entire affidavit filed in support of condonation of delay, it reveals that there is not a single ground at all for the purpose of condoning such a huge delay of 1288 days. Not even a single ground has been stated for the purpose of condoning the delay. We are unable to trace out any reason for the purpose of condoning the delay. Moreover, the order of Id. CIT(A) also reflects the conduct of the assessee/appellant which is as follows:

“The first notice was issued to the appellant fixing the hearing on 07.12.2015. But none attended on this date. The case was re-fixed through another notice and date of hearing was fixed for 13.02.2018. And on this date an adjournment was requested and it was allowed for hearing on 27.02.2018. None attended on this date. However, a request for adjournment was made on 03.03.2018 for preparation of paper book. The matter was fixed for hearing on 27.06.2019 and notice was accordingly served. On 26.06.2019 another petition for adjournment requesting for some more time for preparation of paper book was requested. The matter was therefore re-fixed through a notice fixing hearing on 14.08.2019. None attended on this date. Another opportunity for hearing was given on 12.09.2019 through a separate notice. On the said date the appellant again moved an application for adjournment and as per request the matter was re-fixed for 24.09.2019. None attended on this date. One final opportunity was given to the appellant and the matter fixed for hearing on 15.10.2019. Even on this date none attended. It is now clear that for a period of almost 4 years several opportunities have been given to the appellant but instead of utilising such opportunities the appellant either does not attend or seeks adjournment for preparation of paper book. It does not take about 4 years to prepare paper book and written submission for arguing in an appeal. I am therefore convinced that the appellant has no desire to pursue any of the grounds of appeal and sufficient opportunities have been already given to the appellant. No further opportunities is necessary for the appellant.”

8. It is needless to go over the merit of the case or the case of the parties because first of all we have to decide whether the assessee has furnished

sufficient cause to condone the delay. Under these circumstances, we are of the view that we are not inclined to condone the delay of 1288 days. Accordingly, the instant appeal is hereby dismissed on the point of limitation.

Order pronounced in the open Court on 29th April, 2024.

Sd/-

[Manish Borad]
Accountant Member

Dated: 29.04.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Vedansh Traders Private Limited, 135, Foreshore Road, Baisnabpara Bazar S.O. Alampur, Howrah-711 102.**
- 2. ITO, Ward-13(1), Kolkata.**
3. CIT(A)-19, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

Sd/-

[Pradip Kumar Choubey]
Judicial Member

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata