आयकर अपीलीय अधिकरण ''ए'' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA No.363/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

T A G Radhambikai Kuppusamy, No.5, MP Nagar Extension, Suriya Prabha Garden, Tirupur 641 607	**Vs.**	The Income Tax Officer, CHE –C (68) (1) Chennai.
[PAN: ADOPR 3346P]		
(**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

अपीलार्थी की ओर से/ Appellant by	**:**	Shri. S. Ramachandran, C.A.,
प्रत्यर्थी की ओर से /Respondent by	**:**	Shri. ARV Srinivasan, Addl. CIT.
सुनवाई की तारीख/Date of Hearing	**:**	02.05.2024
घोषणा की तारीख /Date of Pronouncement	**:**	06.05.2024

आदेश / O R D E R

MANU KUMAR GIRI (Judicial Member)

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax(Appeals)(NFAC) Delhi [CIT(A)] dated 05.02.2024 for Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:-

''1. The order of the learned First Appellate Authority is bad and erroneous in law.

2. The learned First Appellate Authority erred in not considering the reasons for the delay in filing the appeal properly, besides erred in construing the medical grounds narrowly. He has not understood what will be the physical status of the Assessee when she is affected by Stroke and not in a position to even Speak and move her hands.

3. The learned First Appellate Authority has wrongly understood that the Assessee did not file the Petition for Condonation of delay initially along with Form 35, When in fact it was filed along with Form 35 and also repeatedly informed in response to all the notices citing the deficiency. [please see para 6.3 of the CIT(A) Order / pages 5 to 9]

4. The learned First Appellate Authority has erred in stating that the Assessee is a Habitual Defaulter (last para of page 10) when in fact he does not have adequate material for his conclusion and also not a reason for considering the condonation petition'.

3. Brief facts of the case are that, the assessee is an individual and has not filed the return income u/s 139(1) of the Income Tax Act, 1961 (in short 'the Act'). As per information available on the insight portal, the assessee has sold an immovable property of Rs.54,00,000/-. Thereafter, the case was reopened u/s148A of the Act. Ld. A.O. passed assessment order dated 14.03.2023 u/s 147 r.w.s 144 read with section 144B of the Act and added Rs.54,00,000/- to the total income of the assessee.

4. As against the assessment order dated 14.03.2023, the assessee has filed an appeal u/s 250 of the Act before the CIT(A) with a delay of 239 days.

5. As per Section 249(2) of the Act appeal shall be presented within 30 days to the CIT(A) which can be condoned by the CIT(A) u/s 249(3) of the Act, if he satisfies that the appellant on sufficient cause for not presenting the appeal within the said period. The assessee represented before the Ld. CIT(A) and filed replies

dated 13.01.2024 and 22.01.2024 to the deficiency letter dated 19.12.2023 issued by the Ld. CIT(A).

6. The assessee has produced medical certificate dated 09/04/2023 before the CIT(A) for condoning the delay in filing of Appeal. Assessee also appraised the fact that assessee has already filed an application praying condonation of delay of 238 days alongwith form 35 on 08.12.2023 itself. But the CIT(A) observed as under:-

> *"as per medical certificate the appellant was admitted from 22.03.2023 to 09.04.2023 even excluding this period the delay in filing appeal is huge. Therefore, the reason provided for delay in filing is not reasonable at all.When an appeal is filed beyond the statutory time limit, the appellant need to provide a valid reason or demonstrate exceptional circumstances for the delay. The appellant must be able to demonstrate that there was 'sufficient cause' which obstructed his action to file appeal beyond the prescribed time limit."*

7. The said approach of the CIT(A) is neither reasonable nor adopted liberal approach. In our view the CIT(A) ought have condoned the delay and decide the appeal on merit.

8. How the power of condonation of delay is to be exercised, has been explained by the Apex Court in the case *of Collector, Land Acquisition v Mst. Katiji And Others- [167 ITR 471 (SC) @ Pg. 472*] as under:-

> *" The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on the 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 the 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. And 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 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."*
> *2. "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.*
> *3. 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.*
> *4. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk.*
> *5. 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. Here we would also like to refer the finding of the Apex Court in the case of N. Balakrishnan V. M. Krishnamurthy, AIR 1998 SC 3222. The Apex Court held as under:-

> "*11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort dilatorytactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by*

> *approaching the courts. So a life span must be fixed for each remedy. Unending period for laundering the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim* ***interest reipublicae up sit finis litium*** *(it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*
>
> *12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words 'sufficient cause' under section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain V. Kuntal Kumari, AIR 1969 SC 575 and State of West Bengal V. the Administrator, Howah Muni-capacity, AIR 1972 SC 749."*

10. There is no doubt that if the Assessee demonstrates that the delay in filing appeal was due to valid mitigating circumstances such as medical condition then the appellate authority can condone delay and consider appeal on its merits. In a similar circumstances, the Hon'ble Jurisdictional High Court in the case of *M/s Great Heights Developers LLP Vs Additional Commissioner Office of the CGST & Central Excise, Chennai [Writ Petition 1324 of 2024 dated 01.02.2024] a*llowed the Writ Petition and directed the Appellate Authority to dispose of the appeal on merits.

11. We have pursued the application/submission dated 08.12.2023, medical certificate wherein reasons stated was of acute medical emergency nature and even assessee was advised by her doctor to undergo physiotherapy for 9-10 months. Ld. CIT(A) clearly missed to look into the substance of the application/submissions

dated 08.12.2023. Therefore, Assessee demonstrates before us that the delay in filing appeal was due to valid mitigating circumstances such as medical condition of the assessee. Hence, we treat such reason as cogent and sufficient cause which cannot be termed as dilatory or frivolous.

12. In the light of the above discussions, considering to adopt pragmatic approach and with an intention to render substantial justice, we find that, there was sufficient cause for condoning the delay in the institution of appeal before the CIT(A) by the assessee hence we condone the delay. The CIT(A) ought to have condoned the delay keeping in view of the laws laid down by the Apex Court in the above cases cited and ratio laid down by the *Hon'ble Madras High Court in the case of Areva T and D India Ltd., Vs. JCIT, [2006] 287 ITR 555 (Mad) and M/s Great Heights Developers LLP Vs Additional Commissioner Office of the CGST & Central Excise, Chennai [Writ Petition 1324 of 2024 dated 01.02.2024.* Therefore, without expressing anything on the merit of the case, we incline to remit the file to the CIT(A) with a direction to decide the appeal on merit after providing reasonable opportunity of being heard to assessee.

13. Before parting with order, we must note here that initially, we thought of imposing cost on assessee as prayed by ld. Additional CIT(DR) but seeing the hardship undergone by the assessee, we are refraining from imposing the cost.

14. In the result, appeal filed by the assessee in ITA No.363/CHNY/2024 for assessment year 2018-2019 is allowed for statistical purpose.

Order pronounced in the open court on 6th day of May, 2024 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	**(मनु कुमार गिरि)**
(MANOJ KUMAR AGGARWAL)	**(MANU KUMAR GIRI)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई Chennai:
दिनांक Dated :06-05-2024
KV
आदेश की प्रतिलिपि अग्रेषित /Copy to :
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF