

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.22/Mum/2024 to 32/Mum/2024
(Assessment Year :2009-10 TO 2015-16)**

M/s. C M Alloys Pvt. Ltd B/705, Shantikamal Building Dr. Babasaheb Ambedkar Marg Chinchpokli (E) Mumbai- 400 012 Maharashtra-400 012	Vs.	ACIT-6(2)(1) Aayakar Bhavan Maharshi Karve Road New Marine Lines Mumbai- 400 030
PAN/GIR No.AABCC1090N		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajendra Jain & Ms. Raksha Birla
Revenue by	Shri H.M. Bhatt
Date of Hearing	09/05/2024
Date of Pronouncement	10/05/2024

आदेश / O R D E R

PER BENCH:

The aforesaid appeals have been filed by the assessee against separate orders of even date 20/09/2023, passed by Id. CIT (Appeals) for various assessment years.

2. All these appeals have been dismissed by the Id. CIT(A) on the ground that there was huge delay in filing of the appeals before the Id. CIT(A) and accordingly, appeal has been dismissed as 'unadmitted'. The details of number of days delay in filing of the appeals are as under:-

A.Y.	Sec.	DATE OF ASSESSMENT ORDER	ADDITION	DATE OF FILING OF APPEAL TO CIT(A)	NO. OF DAYS DELAY IN FILING OF APPEAL BEFORE ICIT(A)]	DATE OF CIT(A) ORDER
2009-10	147/144	27-03-15	8,55,54,469/-	03-02-18	1012	20-09-23
2009-10	271(l)(c)	29-09-15	2,92,05,030/-	23-02-18	847	20-09-23
2010-11	147/144	28-03-16	16,22,38,546/-	03-02-18	675	20-09-23
2010-11	271(1)(c)	21-09-16	5,51,44,882/-	23-02-18	489	20-09-23
2011-12	147/144	23-12-16	48,89,707/-	07-02-18	380	20-09-23
2012-13	147/144	11-12-19	2,52,46,400/-	28-10-21	655	20-09-23
2013-14	144	28-03-16	47,11,76,127/-	28-10-21	2007	20-09-23
2013-14	271(l)(c)	21-09-16	18,00,00,000/-	28-10-21	1832	20-09-23
2014-15	144	22-12-16	8,40,72,186/-	01-01-22	2170	20-09-23
2014-15	271(1 Xc)	11-05-17	6,60,82,745/-	01-01-22	1664	20-09-23
2015-16	271(l)(c)	09-02-22	5,96,71,084/-	02-03-22	DISMISSED ON MERIT	20-09-23

3. Even before the Tribunal, all these appeals are delayed by 43 days. It is further seen that even before the Assessing Officer assessee had not appeared or responded to any of the notices and accordingly, all the assessments have been passed *ex parte* u/s.144. In this case the additions in the quantum have been

made on account of bogus purchases by treating the entire purchases as explained.

4. Before us ld. Counsel for the assessee submitted that there was a background behind that assessee could not represent the case before any of the authorities below and this has been stated in the petition for condonation of delay as to what were the extreme circumstances in which assessee could not represent his case either before the ld. AO or ld. CIT(A). The relevant application for the sake of ready reference is reproduced hereunder:-

1] That I am Jugraj Chunilal Sanghvi is director in the Company C M ALLOYS Private Limited and all the business affairs and other matter relating to company were under my supervision. Therefore I am key person of company. The other director is my son who has no knowledge of financial affairs of company.

2] That in 2010, our company had taken high business loans from bank against the mortgage of factory & residential house for investment in new project and subsequently the outcome of such project resultant our company suffered from huge business losses. That due to financial losses, our company not able to repay the interest & loans obtained from bank and business of our company was completely shut down. Thereafter the banking company had started recovery of loan proceeding against our company and declared our account as NPA. Subsequently in order to recover the loan amount, the bank had obtained the possession of properties which were mortgaged for loan and me with my wife & family had to shift on rented house.

3] The only source of income for our family was business running through our company and the whole business was completely destroyed and cause such damages which are not repairable and put me and my family in hand to mouth situation as we have lost our source of livelihood and also our shelter.

4] Meanwhile on the basis of some information, the department had issued notices to our company and opened the cases of multiple years for assessment or re- assessment proceeding. That while vacating the office, some of the files of 2

documents of business transactions were misplaced and due to stress of debt or other financial issues leaves me feeling depressed or anxious accordingly the compliances of the query raised by the Ld AO were not supplied in proper manner and accordingly the Ld AO had passed the assessment order u/s 147r.w.s 144 of the Act on 27/03/2015 and created huge demand of Rs. 5,02,59,710/- against our company.

5] Further, my elder daughter (Ankita Sanghvi) who had cleared the degree of Chartered Accountant and she was only person in family who is earning and running house. Meanwhile she got married and after marriage was not permitted by in-laws to pursue her Job as she become helpless and not able to support the family financially. Subsequently, her in laws tortured her mentally, totally ignored by husband and their marital relationship is irretrievably broken and there is no possibility of a further reunion. It is not possible to continue her matrimonial life compromising her dignity and individuality as a woman. After suffering from mental trauma and depression since long time in her marriage, she got separated and got divorced in 2022

6] That me and my family were not only financially but also emotionally break down as our financial & family problems adversely impact my mental and physical health and even prompt suicidal thoughts or actions. I was struggling through many health issues and also hospitalized many times and due to mental & financial stress was suffered from heart attack and doctor advised me to take complete rest and live in tension free environment. That being an elder member of family, my wife & children are completely dependent on me and looking to cost of living in Mumbai city, it is very difficult to survive.

7] Further, I have visited the offices of many Chartered Accountants and legal counsels in Mumbai and discussed the cases with them and requested to prepare my cases and to

provide appropriate remedy in accordance with provision of Income Tax Law but looking to my financial position, the high amount of fees demanded by them cannot be afforded by me as I was disappointed from everywhere feeling totally lost & failure person.

8] Meanwhile, the whole world was put down to its knees due to the outbreak of the Covid-19 pandemic in the beginning of 2020. In the wake of such an extreme situation and the difficulties that might be faced by litigants in filing petitions/applications/suits/appeals/all other proceedings within the prescribed period of limitation, the Hon'ble Supreme Court of India on March 23, 2020, took suo moto cognizance of the situation and the challenges faced by the Country on account of Covid-19 pandemic and passed Order dated March 23, 2020 in Sue Moto Writ (Civil) No. 3 of 2020, titled as In Re Cognizance For Extension Of Limitation, extending the period of limitation in all cases in proceedings in all Courts/Tribunals throughout the Country with effect from March 15, 2020 till 28/02/2021. The Hon'ble Supreme Court exercised this power under Article 142 read with Article 141 of the Constitution of India and declared that their order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

9] Subsequently, one of my friend had suggested the name of newly become Chartered Accountant and also charged nominal fees for preparing my cases and accordingly I approached him and explained the facts of our cases and he had advised me to file an appeal before the Ld CITA) and accordingly I have furnished the documents & information for preparation of appeal to him.

10] The Chartered Account had prepared the grounds of appeal and appeal Form -35 and filed the same before the Ld CIT(A) on 03/02/2018 with application for condonation of delay in filing of appeal However, he had not taken any pain and treated our cases as taken for granted and accordingly had made the submission in casual manner not a right perspective or sympathetically manner looking to our real & true condition as discussed with him. Therefore, the Id CIT(A)NFAC had dismissed the appeal by denying to condone the delay through order dated 20/09/2023.

11] Since I was suffering from financial crisis & other health problem and also I am not in the position to pay desiring council fee looking to the amount of additions are involved in the appeal is very huge, and as such due to such reason there was delay in filing of appeal. It is further relevant to mention here that the issues involved in appeal are already decided by Hon'ble Bombay High Court and other High Courts and Hon'ble ITAT Mumbai Bench. Therefore I humbly request kindly take a lenient view and condone the delay and oblige.

12] Subsequently, due to some common connection, I have approached Advocate Rajendra Jain from Jodhpur and mailed the assessment & appellate record of all the years of our company and after examination of same, they advised us to come visit Jodhpur and bring all the documents & evidence of cases. After explaining and discussing the complete details & information with him, he had understand the legal & factual position with supporting evidences and accordingly prepared the application of condonation of delay and appeal Form-36 with grounds of appeal and other supporting documents are submitted before the Hon'ble Bench.

13] That if the delay is not condoned, great injury would be inflicted, given that the subject matter of the appeal is covered in favour of the assessee and the amount involved in the appeal is very huge. Further I humbly request kindly take a lenient view and dispose-off the matter based on the merits of the matter and not on the basis of technicalities.

14] That there was no deliberate or malafide intention for delay in filling of appeal as due to above financial & mental position as explained in detailed there is delay in filing of appeal. Further the copy of Affidavit is enclosed herewith.

15] In case of Collector, Land Acquisition vs MST Katiji, (1987) 2 SCC 107 the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on

one of the principles that 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. Another principle laid down by the Hon'ble Supreme Court is that 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. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and it does not stand to benefit by resorting to such delay more so considering the fact that it has applied for settlement of present dispute and payment of appropriate taxes. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay in filing the present appeal and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred

In light of above there was no malafide or deliberate delay in filing the present appeal and in the interest of substantial justice, the delay in filing the present appeal may be condoned and the appeal be admitted for adjudication. Further also where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred as settled by Hon'ble Courts.”

In support of the above contention, averment on sworn affidavit has also been filed.

5. After hearing both the parties and on perusal of material placed on record, we find that the additions have been made in various years based on information about the bogus purchases made by the assessee and in all the years from some hawala traders and entire purchases have been added despite the source of all the purchases were from the books of accounts and in three assessment years penalty u/s. 271(1)(c) has also been levied on such disallowance of entire purchases and on other issues. It has been contended that, at the time when the re-assessment proceedings were initiated, recovery proceedings from the banks were already initiated and its accounts were declared NPA and bank has also obtained the possession of the properties which were mortgaged for the loan. Assessee's business came to standstill completely. Thereafter, main Director looking after the entire work of the company had to undergo various problems both in the business front as well as personal health and at on the family level as stated in the aforesaid application. From the perusal of the contents stated in the affidavit and in the application, it seems that Director of the assessee company had gone through great hardship as company was taken over by the bank including all the properties and it had no business thereon and the Director of the company who was responsible for attending income tax proceedings had undertaken various personal and family problems during that period. Thus, the reasons for not participating in income tax proceedings and not filing the appeal in time were wholly attributable to the circumstances beyond the control of the

assessee. Thus, we hold that there was a bonafide and reasonable cause for not attending any of the proceedings. Accordingly, delay in filing of the appeals before CIT(A) and 43 days delay in filing of appeal before Tribunal is condoned.

6. In the interest of justice all these appeals are set aside to the file of the ld. AO to decide the issue on merits, instead of sending back to the stage of CIT (APPEALS), as even before the AO assessee could not appear. Ld. AO will take into cognizance the position of law that in case of bogus purchases, if the purchases have been made through banking channels and the source has been recorded in the books of accounts, then at the most suitable GP rate can be applied instead of adding the entire purchases as income of the assessee company; or if assessee is able to establish that purchases were genuine, then ld. Assessing Officer may decide accordingly after giving due opportunity of hearing to the assessee. Assessee is also directed to cooperate in the assessment proceedings and submit the details whatever possible way assessee can provide.

7. In so far as penalty proceedings for A.Y.2013-14, 2014-15 and 2015-16 we find that in A.Y.2015-16, the matter has been set aside by the Tribunal to the file of the ld. CIT (A) and therefore, till the disposal of the appeal by the ld. CIT (A), no penalty can be enforced. Accordingly, the appeal relating to penalty proceedings also is set aside to the file of the ld. AO to be decided afresh after considering the outcome in the quantum

proceedings and accordingly, all the appeals of the assessee are allowed for statistical purposes.

8. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 10th May, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER
Mumbai; Dated 10/05/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai