

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos.558 & 559/Bang/2024
Assessment Years: 2017-18 & 2018-19

M/s. Vydehi Super Speciality Hospital Limited 17, Sankey Road Bangalore 560 020  <b>PAN No.AAACC9494R</b>	<b>Vs.</b>	DCIT Central Circle-2(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Ms. Sunaina Bhatia, A.R.
<b>Respondent by</b>	:	Shri V. Parithivel, D.R.

<b>Date of Hearing</b>	:	17.05.2024
<b>Date of Pronouncement</b>	:	17.05.2024

**O R D E R**

**PER BENCH:**

These appeals by assessee are directed against orders of CIT(A) for the assessment years 2017-18 & 2018-19 both are dated 13.3.2023.

**2.** In ITA No.558/Bang/2024, the assessee has raised following grounds of appeal:

- 1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned CIT[A] erred in refusing to condone delay of 27 days in filing the appeal for which the appellant had also filed an application for condonation of delay explaining the reasons for the delay in filing the appeal, which is due to sufficient cause and not on account of any deliberate neglect on the part of the appellant under the facts and in the circumstances of the appellant's case.*

3. *Without prejudice to the above, the learned CIT[A] ought to have adjudicated the ground raised by the appellant challenging the disallowance of Rs. 89,20,258/- made in respect of interest on borrowed capital under the facts and in the circumstances of the appellant's case.*

**3.** In ITA No.559/Bang/2024, the assessee has raised following grounds of appeal:

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case under the facts and in the circumstances of the appellant's case.*
3. *The appellant denies itself liable to be assessed on total loss of Rs. 1,66,66,859/- as against the returned loss of Rs. 2,47,99,510/- by the appellant under the facts and in the circumstances of the appellant's case.*
4. *The learned CIT[A] is not justified in upholding the disallowance of deduction claimed u/s. of the Act of Rs. 68,64,520/- being the interest paid on term loans under the facts under the facts and in the circumstances the appellant's case.*

**4.** At the outset, it is observed that there was a delay of 27 days in filing the appeal before CIT(A) in assessment year 2017-18. He has not condoned the delay and dismissed the appeal in limine. In assessment year 2018-19, the Id. CIT(A) decided the appeal ex-parte without participation of the assessee.

**4.1** It was further noted that there was a delay of 318 days in filing both the appeals before this Tribunal. The assessee filed a condonation petition, wherein it was stated as follows:

4. *“That, recently, we have received the penalty order U/ s 270A of the Act dated 18/03/2024 by the Assessment Unit, Income-tax for the assessment year 2018-19 and it only then that we realized that the appeal against the appellate order passed by the learned CIT[A] directed against the orders passed u/ s. 143[3] of the Act for the assessment years 2017-18 and 2018-19 were not yet filed by our company and thereafter, we proceeded to examine the reasons for the failure to file appeals against the said appellate orders within time.*

5. *That, from our enquiry it is found that the aforesaid appellate order passed by the learned Commissioner of Income-tax [Appeals] - 11, Bangalore was served upon us physically by post and the said appellate orders were received by the then accountant Mr. T. Janardhana, who was following up the matters relating to the appeals filed.*

6. *That, in ordinary course, the said Mr. T. Janardhana was required to bring the aforesaid appellate orders passed to our attention and thereafter, hand over the same to our authorized representative to prepare and file the appeal before the Hon'ble I TAT, Bangalore Bench, Bangalore.*

7. *That, the said Mr. T. Janardhana left services of our company on 31/03/2023 and did not bring to our attention, the aforesaid appellate orders received and that appeals were to be filed before the Hon'ble I TAT.*

8. *That, it is only after receipt of the penalty order u/s 270A of the Act for the assessment year 2018-19, we have realized that the appeal against the aforesaid appellate orders were not yet filed.*

9. *That, there upon immediate steps were taken by us to file an appeal before the Hon'ble I TAT as soon as it was discovered by seeking condonation of delay since the exact date on which appellate order dated 13/03/2023 was received is not forthcoming and therefore, the limitation for filing the appeal has been calculated from the date of the appellate order itself.*

10. *That accordingly the appeal papers were prepared and filed the appeal before the Hon'ble Income-tax Appellate Tribunal, Bangalore Bench, Bangalore without any further delay.*

11. *That there is a delay of 318 days in filing the appeal before the Hon'ble Tribunal is due to reasonable cause and on account of circumstances beyond my control and the delay was neither intentional, willful nor deliberate and was occasioned for the reasons stated above.*

12. *That, it is, therefore, prayed that the delay of 318 days in filing the appeal may kindly be condoned and the appeal may kindly be admitted and disposed off on merits for the advancement of substantial cause of Justice.”*

**4.2** The Id. D.R. strongly opposed admitting of appeal by this Tribunal belatedly.

**5.** We have gone through the condonation petition filed by the assessee. It was explained before us that the assessee's case has been looked after by assessee's accountant Mr. T. Janardhana who has left the employment and he failed to bring these income tax

matters to the knowledge of the management and the management came to know about the passing of these ex-parte orders by first appellate authorities only on receipt of order of penalty passed u/s 270A of the Act in assessment year 2018-19. As such, it was come to the knowledge of assessee belatedly. The assessee failed to take remedial measures to file appeal before this Tribunal in time. In our opinion, the delay mentioned by the assessee is bonafide as held by Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471), wherein the Apex Court had laid down six principles which 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 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.*
- 3) *“Every day’s delay must be explained” does not mean that a 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 consideration 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 a serious risk.*
- 6) *It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”*

**5.1** Being so, when substantial justice and technical consideration 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. In this case, in our opinion, the assessee explained the delay by way of

condonation petition accompanied by an affidavit and we find that there is a good and sufficient reason in filing these two appeals belatedly before this Tribunal. Accordingly, we condone the delay and admit the appeal for adjudication.

**5.2** After adjudication of the appeal for assessment year 2017-18, there was a delay in filing the appeal before Id. CIT(A), which is explained by the assessee as follows:-

1. *“An order of assessment was passed under Section 143(3) of the Income Tax Act, 1951 for the Assessment Year 2017-18 by the learned Assessing Officer dated 31-12-2019 which was received on 31-12-2019.*
2. *In this regard, the Appellant wishes to humbly submit that it could not prefer an appeal under the provisions of Section 246A of the Act due to wrong professional advice with regard to the additions made in the order of assessment. The appellant further wishes to submit that as per the provisions of section 246A of the Act, the appellant ought to have filed the statutory appeal against the impugned order of assessment passed under section 143 [3] of the Act within 30 days from the date of receipt of the said impugned assessment section 246A of the Act within the stipulated time as envisaged in the provisions of the Act.*
3. *After receipt of the assessment order, the Appellant approached its authorised representative who had appeared before the learned assessing officer for the assessment proceedings seeking the next course of remedy available. The authorised representative who appeared before the learned assessing officer due to his other professional work load he was not able to advise the appellant in time. When the appellant enquired about the advice as regard to the next course of remedy then the said authorised representative advised to approach the present counsel for preferring a statutory appeal before the Hon'ble Commissioner of income Tax Appeals and for further action since he was not conversant with the appellate proceedings.*
4. *Immediately thereafter, the Appellant approached the present counsel and handed over all the relevant papers of the case to the staff in the office of the counsel and by the time the appellant approached the present counsel there arose a delay.*
5. *In view of the above, the Appellant could not file the Appeal before your Honour well in time and by the time the appeal papers are prepared for filing by the present counsel, there arose delay of about 26 days in filing this present appeal before this Hon'ble authority.*

6. *It is humbly prayed that your Honour may take a lenient and compassionate view and condone the delay in filing the present appeal against the order of the learned assessing officer passed under section 143 [3] of the Act and hear the same on merits for the advancement of substantial cause of justice.*
7. *It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the appellant would be put to great hardship' and irreparable injury and on the other hand no hardship or injury would be caused to the Respondents if this application of condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition vs. MST Katiji and Others [1987] 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507 Further the appellant relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733.*
8. *Therefore, the above mentioned appellant humbly pray before your Honour to kindly take a lenient and compassionate view and condone the delay of about 26 days in filing the present appeal and the admit and hear the same on merits of the matter for the advancement of substantial cause of justice."*

**5.3** This delay was explained before CIT(A). However, he has not condoned the delay and observed that there was no reasonable cause for condoning the delay of 27 days. In our opinion, there is a good and sufficient reason advanced by the assessee for filing the appeal belatedly by 27 days before the Id. CIT(A) and accordingly, we condone the delay. Accordingly, this appeal is remitted to the file of Id. CIT(A) to decide on merit in accordance with law.

**5.4** With regard to AY 2018-19, the Id. CIT(A) has not decided the issue and the appeal was dismissed ex-parte for this assessment year. Accordingly, we remit the entire issue in dispute to the file of Id. CIT(A) for fresh adjudication and decide the same after giving an opportunity of hearing to the assessee.

**6.** In the result, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 17<sup>th</sup> May, 2024

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 17<sup>th</sup> May, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**