

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.: 1345/KOL/2023  
Assessment Year: 2013-14

*Avijit Mondal*.....*Appellant*  
[PAN: APGPM 2105 P]

Vs.

*ITO, Ward-52(1), Kolkata*.....*Respondent*

**Appearances:**

**Assessee represented by:** None.

**Department represented by:** Probhash Roy, Addl. CIT, D/R.

Date of concluding the hearing : April 30<sup>th</sup>, 2024

Date of pronouncing the order : May 28<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by ld. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] dated 28.11.2023 arising out of the assessment order framed u/s 147/143(3) of the Act dated 27.12.2018.

2. Ld. Counsel for the assessee submitted that ld. CIT(A) erred in dismissing the appeal of the assessee on the ground of limitation though assessee in his condonation petition has stated the cogent and sufficient

reason of delay i.e. apparent in the condonation petition of the assessee. The ld. Counsel for the assessee submits that there was delay of only 20 days in filing the appeal and it has clearly been mentioned in the condonation petition that appellant had remained out of station for about 20 days and he was also sick which prevented him from searching a good lawyer or accountant to deal with his case. His prayer is to condone the delay and case record be sent back to ld. CIT(A) for fresh decision.

3. Ld. D/R supported the impugned order.

4. We have perused the record and find that the assessee filed an appeal against the order of the Assessing Officer (in short ld. 'AO') in which the AO has observed that *“During the FY 2012-13 the assessee had LTCG of Rs. 21,93,000/- on account of development agreement which is nothing but transfer of the said property. Accordingly, as no satisfactory reply has been given by the assessee, Rs. 21,93,000/- is treated as undisclosed LTCG and escaped assessment for the AY 2013-14. Hence the total amount of Rs. 21,93,000/- to his total income as undisclosed LTCG.”*

4.1. The assessee is a salaried person and received salary from Central Government and his case was opened as per the AIR information that the transacting parties have executed a Joint Development Agreement with developer. After losing the battle before the AO, the appellant preferred appeal before ld. CIT(A) and ld. CIT(A) after considering the facts of the case has opined that appellant has not explained this delay in filing the appeal. Hence the instant appeal filed after the expiry of due date is barred by limitation and not admitted. Being aggrieved by the order of ld. CIT(A) the present appeal has been preferred before us.

5. We have perused the order of ld. CIT(A) and find that he observed as under:

*“In this case, the appellant preferred the instant appeal against the order of the AO dated 27.12.2018, which was served to him on 01.01.2019 as per the Form 35 filed by appellant. The instant appeal has been preferred on 20.02.2019 i.e. after delay of 20 days because the due date for filing of*

*appeal comes on 31.01.2019 which is 30 days after the receipt of order as per the provision of section 249 (2) of the IT Act, 1961. Further, in Para 15 of the Form No. 35 the appellant has cited the reasons for causing delay that he had remained outstation for about 20 days and he was also sick for a number of days which badly prevented him from searching a good lawyer or Accountant or a knowledgeable person to properly and efficiently deal with his case. In this regard, it is to be noted that the appellant has not furnished any documentary evidence/medical certificate etc. in support of his contentions of remaining sick and was out of station causing such delay in filing of appeal. Furthermore, the law has provided 30 days' time period, which is long enough and sufficient after factoring in all uncertainties like arranging consultants, papers/ documents for drafting and filing of appeals etc. therefore, the above contentions/reasons for attributing the delay in filing of appeal after expiry of statutory limitation date is not tenable. Therefore, from the above facts and documents, it is established that appellant has failed to furnish any "sufficient and reasonable cause" along with evidence which may be accepted and considered for attributing delay in preferring the appeal within limitation period."*

5.1. The only question for our determination is that whether ld. CIT(A) was justified in holding that appellant failed to disclose the sufficient cause of the delay.

5.2. It admits of no doubt that the delay is of only 20 days. The appellant in his condonation petition has stated that he was remained out of station during that period. He was also sick and was searching a lawyer or accountant to deal his case effectively and due to that reason delay of 20 days had been caused.

5.3. In this context, we have perused the several decisions of the Hon'ble Apex Court and find that in *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575], this Court reiterated the following classic statement from *Krishna vs. Chathappan* [1890 ILR 13 Mad 269]:

*"... Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."*

5.4. In *N. Balakrishnan v. M. Krishnamurthy* [1998 (7) SCC 123], this Court held:

*"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*

*The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice..... Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.*

*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."*

5.5. The present case in hand is that the appellant preferred the instant appeal against the order of the AO dated 27.12.2018 which was served to him on 01.01.2019. The instant appeal has been preferred on 20.02.2019 i.e. after a delay of 20 days.

6. Keeping in view the above cited decisions and the principles laid down by the Hon'ble Apex Court with respect to the condonation of delay, we are of the view that there was no intentional delay rather it was *bona fide*. Accordingly, the delay is hereby condoned, the order of ld. CIT(A) is set aside and the case is remanded back to the file of ld. CIT(A) by giving opportunity to the assessee to submit his case and thereafter ld. CIT(A) shall pass a fresh order.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 28<sup>th</sup> May, 2024.**

*Sd/-*

**[Manish Borad]**

Accountant Member

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

Dated: 28.05.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Avijit Mondal, 19A, Rajabagan Lane, Kolkata, West Bengal, 700030.**
2. **ITO, Ward-52(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata