

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1192/Del/2024
Assessment Year 2011-12

Anil Jain 292/4, Joor Bagh Kotla Mubarakpur New Delhi	Vs.	ITO, Ward-53(1) New Delhi
TAN/PAN: AAHPJ5862A		
(Appellant)		(Respondent)

Applicant by:	Shri Anil Jain, Advocate Shri Yougal Kishore, Advocate		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	18	06	2024
Date of pronouncement:	18	06	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['CIT(A)' in short] dated 09.02.2024 arising from the assessment order dated 30.11.2018 passed by the Assessing Officer (AO) under Section 147 r.w. Section 144 of the Income Tax Act, 1961 (the Act) concerning A.Y. 2011-12.

2. The assessee as per its grounds of appeal has raised several grievances. One of the grievance relates to adjudication of first appellate order *ex-parte* refusing to condone delay of 36 days in filing the appeal before the CIT(A).

3. A perusal of the order of the CIT(A) shows that the CIT(A)

has declined to entertain the appeal of the assessee for adjudication on merits owing to delay in filing appeal by 36 days. The CIT(A) refused to condone the delay and thus declined to proceed in the matter.

3.1 Section 249(2) of the Act contemplates that appeal shall be presented within 30 days from the date of service of notice of demand relating to assessment or penalty. Section 249(3) of the Act however confers statutory discretion to the CIT(A) to admit an appeal after expiration of such period of 30 days, if he is satisfied that assessee has sufficient cause for not presenting the appeal within that period. Therefore, the CIT(A) is vested with statutory discretion to admit the appeal belatedly for determination of issues on merit in appropriate circumstances.

3.2 In this background, I notice from the submissions made on behalf of the assessee that the assessment order dated 30.11.2018 was received by him on 05.01.2019. The appeal was filed by the assessee on 02.02.2019. Therefore, if the averments towards date of service of order by the assessee is taken as *sacrosanct*, appeal appears to have been filed within time.

3.3 Be that as it may, there can be no straightjacket formula to come to conclusion as to whether the sufficient and good grounds have been made out or not while seeking condonation of delay. The delay of 36 days is very nominal delay and do not appeal to cause any serious prejudice to the interest of the revenue attributable to such small latches. We do not see any *mala fide* written large on the conduct of the assessee on alleged delay. It is trite that an attempt should be made to allow the matter to be contested on merits rather than to throw it out on such

technicalities. Apart from the above, the assessee does not stand to benefit in any manner whatsoever by not filing appeal within the period of limitation. In fact, the case of the assessee is that appeal has been filed within the period of limitation. Keeping in mind, the circumstances existing in the present case, one cannot say that assessee has been callous and negligent in prosecuting the matter.

4. At this point, reference is made to the decision of the Hon'ble Supreme Court in *Improvement Trust Vs. Ujagar Singh, (2010) 6 SCC 786 (SC)* and *Bombay Mercantile Co-op. Bank vs. CBDT (2010) 45 DTR 377 (Bom)* for the proposition that in the matter of condonation of delay, a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities. The test of 'sufficient cause' is purely an individualistic test. It is not an objective of test as observed by the Hon'ble Bombay High Court in the case of *Vithhal Dhondiba Chawan vs. Madhav Rao (Bom) Civil Application No.9464 of 2008 judgment dated 06.082009*.

5. While considering the bonafides of the delay, an adjudicating authority is expected to bear in mind the principles laid down by Hon'ble Supreme Court in the *locus classicus* case of *Collector of land acquisition vs. Mst. Katiji & Ors. 167 ITR 471 (SC)*. The Hon'ble Supreme Court laid down the guiding principles for adopting a liberal approach in the matter of condonation of delay. The principles laid down by the Hon'ble Court 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 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."

3. "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.

4. 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

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 serious risk.

6. 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."

6. The principles enunciated by the Hon'ble Supreme Court says it all.

7. In the light of facts and circumstances narrated hereinabove, I am of the view that the assessee has sufficiently discharged its burden of proof while seeking condonation of delay. Consequently, I direct the CIT(A) to condone the purported delay occurred in filing the appeal before it and admit the appeal for adjudication on merits in accordance with law.

8. Accordingly, the appeal captioned above is restored to the file of the CIT(A) for *de novo* adjudication on merits in

accordance with law after giving fair opportunity to the assessee.

9. In the result, the appeal of the assessee captioned above is allowed for statistical purposes.

Order was pronounced in the open Court on 18th June, 2024.

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: June, 2024
Prabhat