

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.130 & 131/Ind/2024
(Assessment Year: 2015-16 & 2016-17)

Prathmik Krashi Sakh Sahakari Samiti, Gram Peeklon Kurwai, Vidisha (Appellant / Assessee)	Vs.	ACIT, Vidisha (Respondent/ Revenue)
PAN: AAAAP6956B		
Assessee by	S/Shri Ashish Goyal & N.D. Patwa, AR	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	18.07.2024	
Date of Pronouncement	19.07.2024	

ORDER

Per Bench:

These two appeals by the assessee are directed against two separate orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi both dated 22.11.2023 for the Assessment Years 2015-16 & 2016-17 respectively.

2. The assessee has raised common grounds in these appeals.

The grounds raised for the Assessment Year 2015-16 are reproduced as under:

1. The Ld. AO was not justified in passing the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2. The Ld. CIT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled

3. The Ld. CIT(A) was not justified as opportunity for explaining the delay was not granted.

4. The Ld. CIT(A) was not justified in ex-parte dismissing the appeal and not condoning the delay that a fair and meaningful opportunity was not available to the appellant to the present case.

5. The Ld. CIT(A) was not justified in confirming the addition of Rs. 5,00,55,115 as unexplained money u/s 69A against cash deposits.

6. The appellant carves leave to add, amend or modify any of the grounds of appeal

3. At the time of hearing the Ld. AR of the assessee has submitted that CIT(A) has dismissed the appeal of the assessee as not maintainable being barred by limitation without giving an opportunity to the assessee to explain the cause of delay. He has further submitted that the CIT(A) has not issued any show cause notice to the assessee before dismissing the appeal on the ground of time barred/delay in filing the appeal. He has pointed out that the

assessee is a primary agriculture credit society working for the upliftment and benefit of the farmers. The assessee society is dependent on the tax consultant and the necessary application/affidavit for condonation of delay was not filed due to the reason that the tax consultant has not advised so. He has thus prayed that the assessee be given one more opportunity to explain the cause of delay in filing the appeal before the CIT(A) and the matter may be remanded for fresh adjudication by the CIT(A).

4. On the other hand Ld. DR has submitted that CIT(A) has considered the reasons explained by the assessee in Form-35 which are not found to be reasonable cause of delay of 191 days in filing the appeal and consequentially the appeal of the assessee was dismissed as barred by limitation. Thus, Ld. DR has submitted that the assessee has made a vague explanation of delay in filing the appeal and therefore, the CIT(A) is justified in dismissing the appeal as not maintainable.

5. We have considered rival submissions and perused the relevant material on record. There was a delay of 191 days in filing

of these appeals before CIT(A). Ld. CIT(A) has passed identical orders for both the years after considering the reasons given in Form-35 for delay and declined the condonation of delay in para 9 to 17 as under:

"9. Condonation of delay -

The condonation of delay of 191 days in filing the appeal needs to be decided. In this case, it is seen from the records that the date of assessment order is 28-03-2022 and the said order has been duly served upon on the appellant on 28-03-2022. The appeal is filed on 04-11-2022 beyond the stipulated time for filing appeal prescribed u/s249(2) of the Income tax Act, 1961. Thus, there is a delay of 191 days in filing the appeal. Along with the Form 35 the appellant has stated as under-

"There is a delay in filing the appeal due to delay in gathering the necessary documents. Therefore it is requested to kindly condone the delay and accept the appeal"

10. It is noted that the appellant is an AOP and its books of accounts were audited. Then it is not clear what other necessary documents were being gathered and also it is seen that no documents explaining cash credits were produced during the appeal proceedings. From the above it reveals that the appellant has not produced sufficient cause which prevented him from filing the appeal within the 30 days time limit which ended on 27-04-2022 and even thereafter for more than 191 days

11. Reasons provided by the appellant for the unreasonable delay in exercising the statutory right in seeking remedial is not a sufficient cause. Unless and until it is demonstrated that there was sufficient cause that prevented the appellant from exercising the legal remedy of filing appeal within that prescribed period of 30 days, the delay thereafter cannot be condoned.

12. From the facts of the case, it is clear that the statutory right to appeal vested with the appellant was not exercised within the stipulated time u/s.249(2) of the Act. Thus, this clearly is a case of deliberate inaction and delay on the part of the appellant. Non-adherence to the prescribed period of limitation will only lead to stretch the matter endlessly and will undoubtedly thwart the intent and purpose of the legislation.

13. *Under these circumstances, the delay of 191 days in filing of appeal in this case is not condoned as no "sufficient cause is attributed as prescribed u/s. 249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the stipulated period of limitation u/s.249(2) of the Income Tax Act, 1961 read with Section 5 of Limitation Act, 1963.*

Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties.

14 *The Apex Court in Ajay Dabra Vs Pyare Ram & Ors (SC)-SLP(C) No 15793 dated 31.01.2023 noted that*

"What we have here is a pure civil matter. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay. and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay"

15. *The Apex Court in Oriental Aroma Chemical Industries Ltd (2010) 5 SCC 459 and R.B Ramlingam's 2009(1) RCR (Civil) 892 (supra) noticed that the applicant petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.*

16. *Considering the above discussion, I am of the view that the appellant misleading on facts and failed to explain the delay in filling appeal was due to sufficient cause, therefore appeal of the assessee shall have to be dismissed Resultantly, appeal of the assessee is treated as time barred and is according dismissed.*

17. *In the result, as delay in filing of appeal is not condoned because appellant failed to establish sufficient cause, the appeal is not admitted and rejected accordingly.*

*It is also observed that the case based on records available, statement facts, Assessment order and submission made by the appellant, appears weak on merits also.
In the result, the appeal is dismissed."*

5.1 Thus, it is clear that the CIT(A) has not issued any show cause notice to the assessee before dismissing the appeal on the ground of barred by limitation. Though the brief reason mentioned in Form-35 attribute the cause as delay in gathering necessary documents however, the reasons for the delay in gathering the documents were not before the CIT(A) as the assessee was not given an opportunity to explain the reasons of delay in gathering necessary documents. It is a case of reopening of assessment u/s 148 on 31.03.2021 and there was a substantial gap between the assessment years under consideration and reopening the assessment by the A.O and therefore, without giving an opportunity to the assessee to explain the reasons properly in the form of application or affidavit, the dismissal of this appeal on this ground is not justified. Accordingly in the facts and circumstances of the case we find that there is a violation of principle of natural justice when the assessee was not given an opportunity to explain the cause of delay in filing these appeals before CIT(A) consequently, the impugned orders passed by CIT(A) are set aside and the matters are remanded to the record of CIT(A) for deciding the same afresh after giving appropriate opportunity to the assessee to explain the cause of delay.

6. In the result both appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 19.07.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 19.07.2024

Dev/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*