

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA Nos. 1008 to 1012/Bang/2024</b>
<b>Assessment Year : 2015-16, 2018-19 &amp; 2020-21</b>

Shri Srinivasan Narayanan, No. 12, Eden Garden, Thally Road, Hosur Taluk, Krishnagiri Dt., Hosur Town, Tamil Nadu – 635 109. <b>PAN: ACYPN1313R</b>	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Central Circle – 1(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri T. Vasudevan, Advocate
Revenue by	:	Smt. S. Praveena, CIT-DR

Date of Hearing	:	01-07-2024
Date of Pronouncement	:	29-07-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals arises out of consolidated order passed by Ld.CIT(A) dated 19.03.2024. At the outset, the Ld.AR submitted that the Ld.CIT(A) did not condone the delay in filing the appeals filed against the orders passed in quantum and penalty appeals.

2. The details of the delay in filing the appeals before the Ld.CIT(A) is tabulated as under:

AY	Date of order passed by AO	Appeal No.	Date of service as per Form 35	Date of filing	Whether appeal is filed with time
2015-16	29.09.2021	CIT(A)-11/BNG/11089/2014-15	29.09.2021	11.04.2023	316 days delay
2015-16	17.03.2022	CIT(A)-11/BNG/11090/2014-15	17.03.2022	11.04.2023	360 days delay
2018-19	29.09.2021	CIT(A)-11/BNG/10867/2017-18	29.09.2021	11.04.2023	316 days delay

3. The Ld.AR submitted that, the orders appealed before the Ld.CIT(A) is tabulated as under:

S.No.	AY	Order u/s.	Date of order
1	2015-16	153A r.w.s 144	29.09.2021
2	2015-16	271(1)(c)	17.03.2022
3	2018-19	153A r.w.s 144	29.09.2021
4	2018-19	270A	17.03.2022
5	2020-21	144 r.w.s 153D	29.09.2021

4. He drew our attention to the date of the orders passed by the Ld.AO. It was submitted that Ld.CIT(A) did not condone as the delay was more than 300 days. He submitted that all the orders passed by the Ld.AO for the years under consideration were during covid period and after reducing the period excluded by the orders of the *Hon'ble Supreme Court*, the delay computed by the Ld.CIT(A) is as under:

A	B	C	D (C-B)	E	F
AY	Limitation for filing of appeal	Actual Date of filing of appeal	Original delay in filing of appeal	From 30.05.2022 to till date of filing of appeal	Total delay after exclusion of period as per SC order
2015-16	29-10-2021	11.04.2023	529	213	316
2015-16	16-04-2022	11.04.2023	360	NA	360
2018-19	27-10-2021	11.04.2023	531	215	316
2018-19	16-04-2022	11.04.2023	360	NA	360
2020-21	29-10-2021	11.04.2023	529	213	316

**5.** He submitted that the manager of the assessee was holding on to all the assessment orders himself and could not handover to the authorized representative to take necessary steps. He placed reliance on the affidavit of the manager reproduced by the Ld.CIT(A) in the impugned order. The Ld.AR submitted that, it is upon receiving the notice on 27.01.2023 that the assessee realized about the assessment orders passed by the Ld.AO that went unnoticed by the manager.

**6.** The Ld.AR submitted that, the assessee filed all relevant information to substantiate the reasonable cause in the delay in filing the appeals before the Ld.CIT(A), which was not considered. The Ld.AR thus prayed for the issues to be considered on merits by admitting the appeals of the assessee.

**7.** On the contrary, the Ld.DR vehemently opposed the condonation of delay as necessary benefit has been provided by the Ld.CIT(A) by excluding the covid period.

We have perused the submissions advanced by both sides in the light of records placed before us.

**8.** It is noted that assessee is a proprietor of Mahalakshmi Blue Metals and is also Director of M/s. Supreme Hatcheries and Proteins India Pvt. Ltd.

We note that the assessment orders were received by the assessee and was handed over to manager Shri Ashok as has been submitted in the condonation petition filed by the assessee

as well as the manager. From the affidavit of the manager it is noted that he fell ill, and thereafter when he resumed, the papers were not found on his table due to lapse of time. The manager was therefore under the bonafide belief that the appeal has been filed with the department. However, it was only when the assessee received the recovery notice that the mistake not having filed the appeal came into light.

**9.** Having regard to the submissions by the assessee as well as affidavit of Shri Ashok, we refer to the decision of *Hon'ble Cochin Bench of this Tribunal* in the case of *Midas Polymer Compounds Pvt. Ltd.* dated 25.6.2018, condoned the delay of 2819 days by observing as follows:

*"6. We have heard the rival submissions and perused the record. There was a delay of 2819 days in filing the appeal before the Tribunal. The assessee has stated the reasons in the condonation petition accompanied by an affidavit which has been cited in the earlier para. The assessee filed an affidavit explaining the reasons and prayed for condonation of delay. The reason stated by the assessee is due to inadvertent omission on the part of Shri Unnikrishnan Nair N, CA in taking appropriate action to file the appeal. He had a mistaken belief that the appeal for this year was filed by the assessee as there was separate Counsel to take steps to file this appeal before the ITAT. Therefore, we have to consider whether the Counsel's failure is sufficient cause for condoning the delay. The Madras High Court considered an identical issue in the case of *Sreenivas Charitable Trust v. Dy. CIT (280 ITR 357)* and held that mixing up of papers with other papers are sufficient cause for not filing the appeal in time. The Madras High Court further observed that the expression "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.*

6.1 On merit the issue is in favour of the assessee. But there is a technical defect in the appeal since the appeal was not filed within the period of limitation. The assessee filed an affidavit saying that the appeal was not filed because of the Counsel's inability to file the appeal. The Revenue has not filed any counteraffidavit to deny the allegation made by the assessee. While considering a similar issue the Apex Court in the case of *Collector, Land Acquisition v. Mst. Katiji and Ors.* (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex 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 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, commonsense 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 nondeliberate 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.

6.2 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 for injustice being done because of nondeliberate delay. In the case on our hand, the issue on merit regarding allowability of deduction u/s. 80IB of the Act was covered in favour of the assessee by the binding Judgment of the jurisdictional High Court. Moreover, no counter-affidavit was filed by the Revenue

*denying the allegation made by the assessee. It is not the case of the Revenue that the appeal was not filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the Tribunal is capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalising an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorised by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalise an illegal and unconstitutional order passed by the lower authority. Therefore, in our opinion, by preferring the substantial justice, the delay of 2819 days has to be condoned.”*

**10.** In the present facts, on examining whether the reason stated by the assessee to seek condonation of delay before Ld.CIT(A) are sufficient to condone the delay and whether, there exists sufficient cause for not presenting the appeal before Ld.CIT(A) within the period of limitation under the statute, the assessee must show that, it was diligent in taking appropriate steps and the delay was caused notwithstanding with its due diligence. It is for the party concerned to explain the reasons for delay and it is not the function of concerned authorities often to find cause for delay. The Court/authority has to examine whether the sufficient cause has been shown by the party for condoning the delay, and whether such cause is reasonable or not. In the present case in hand, the assessee explained the delay in filing the appeals before the Ld.CIT(A) was on the reason that the assessee presumed the appeals were filed by the representative

who was handling the case at that point of time. However it was only on receipt of the recovery notice that the lapse by assessee's manager was realized. This being the position, it constitutes sufficient cause for filing the appeals belatedly. We note that the manager as well as the assessee were under the bonafide belief that the appeals were filed and necessary follow up were being done.

**10.1** Further, on perusal of cause that leads to delay, we note that it was the bounden duty of the Manager to approach a tax practitioner for correct advice. It is submitted by the Ld.AR that the Manager was under a bonafide belief that nothing further needs to be done in respect of the assessment order. In any case, the assessee is not benefitted with the delay caused in filing appeal before Ld.CIT(A), the lapse that occurred on behalf of the representative cannot be attributed to the assessee for which assessee could be punished.

**11.** In case of *People Education & Economic Development Society Vs. ITO* reported in *100 ITD 87 (TM) (Chen)*, it was held that;  
*“when substantial justice and technical consultation 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 non-deliberate delay”.*

**12.** The next question that arises is whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause

for not able to file the appeals within the period of limitation. The cause for the delay therefore deserves to be considered, when there exist a reasonable cause, and therefore the period of delay may not be relevant factor. In support, we rely on the decision of *Hon'ble Madras High Court* in the case of *CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596)* considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. *Hon'ble Madras High Court* thus condoned nearly 21 years of delay in filing the appeal. As compared to 21 years, delay of about 1000 to 2000 days cannot be considered to be inordinate or excessive.

**13.** *Hon'ble Madras High Court* in the case of *Sreenivas Charitable Trust* reported in *280 ITR 357* held that, no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the *Hon'ble Madras High Court (supra)* clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause"

should receive a liberal construction. In opinion of this *Tribunal*, this decision of *Hon'ble Madras High Court* is applicable to the present facts of the case. A similar view was taken by *Hon'ble Madras High Court* in the case of *Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad)*.

**14.** We also refer to the decision of *Hon'ble Mumbai Bench of this Tribunal* in the case of *Bajaj Hindusthan Ltd. v. Jt. CIT (AT)* reported in *277 ITR 1* condoned the delay of 180 days when, the appeal was filed after the pronouncement of the Judgment of the *Hon'ble Supreme Court*. It is also to be noted that the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. *Hon'ble Supreme Court* in the case of *Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi* reported in *AIR 1978 SC 537* held that, non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counter-affidavit opposing the application of the assessee, therefore, as held by *Hon'ble Supreme Court*, there is sufficient cause for condonation of delay. *Hon'ble Supreme Court* also observed that; “*It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. Condonation of delay is the discretion of the Court/Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not*

*filing the appeal within the period of limitation, the delay deserves to be condoned, irrespective of the duration/period.”*

**15.** At this juncture, we also take assistance and support from the observations of *Justice Krishna Iyer* as he has quoted at various occasion while dealing with technicalities that “*any interpretation that alludes substantive justice is not to be followed and that substantive justice must always prevail over procedural technicalities*”. Even *Hon’ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 has laid down a ratio of similar principles.

**16.** We therefore feel that the reasons assigned by the assessee inability to present the appeal within time before *Ld.CIT(A)* deserves consideration based on the principles laid down by *Hon’ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471.

**17.** Reliance is placed on following observations by *Hon’ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon’ble Court* observed as under:-

*“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits”. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters*

*instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.*

*And such a liberal approach is adopted on principle as it is realized that :*

*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.”*

**18.** However, it is noted that the assessee could not substantiate the delay caused in filing the appeals before the Ld.CIT(A) in accordance with law and the Ld.CIT(A) dismissed the appeal for non-appearance.

In the interest of justice, the appeals are remitted back to the Ld.CIT(A). The assessee is directed to file condonation petition before the Ld.CIT(A) along with necessary evidences. The Ld.CIT(A) shall consider the affidavit filed by the assessee and pass necessary orders in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

On merits of the case, we note that nothing has been decided by the Ld.CIT(A) to consider the claim in accordance with law having regards to the evidences filed by the assessee. The assessee is

directed to furnish all necessary evidences / documents in support of its claim. Needless to say that proper opportunity of being heard must be granted to assessee.

**Accordingly, the grounds raised by assessee in all the appeals stands partly allowed for statistical purposes.**

**In the result, all the appeals filed by the assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 29<sup>th</sup> July, 2024.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 29<sup>th</sup> July, 2024.  
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore