

IN THE INCOME TAX APPELLATE TRIBUNAL, "C" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No. 2222/MUM/2024  
(A.Y.2022-23)

IEI Shareholding(Personal Development -1987) Trust, Ion House, 4 <sup>th</sup> Floor, Dr. E Moses Road, Near Famous Studio, Mahalaxmi, Mumbai-400011.	Vs.	ITO Ward 22(2)(1), Piramal Chambers, Lalbaugh, Mumbai-400011.
PAN/GIR No. AAATI0093D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Motichand Gupta.AR
Respondent by	Shri H.M Bhatt.Sr.DR

सुनवाई की तारीख/Date of Hearing	03.07.2024
घोषणा की तारीख/Date of Pronouncement	04.07.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the Joint Commissioner of Income Tax (Appeals)(JCIT(A)), Udaipur passed u/sec 143(1) and 250 of the Act. The assessee has raised the following grounds of appeal:

*“1. That on the facts and in the circumstances of the case, the Ld Assessing Officer erred in facts as well as in law by treating the appellant as an Association of Person.*

*2. That on the facts and in the circumstances of the case, the Ld Assessing Officer erred in facts as well as in law by determining the tax liability of the Appellant at Maximum Marginal Rate (MMR).*

*3. That on the facts and in the circumstances of the case, the Ld Assessing Officer has erred in facts as well in law, in computing the tax liability of the Appellant by applying section 167B of the Act, without appreciating the fact that the appellant is not an Association of Person and merely acting as a representative.*

*4. That on the facts and in the circumstances of the case, the Ld Assessing Officer has erred in facts as well in law, in not computing the tax liability of the Appellant under section 164(1) of the Act read with proviso (iv), at the slab rates.*

*5. That on the facts and in the circumstances of the case, the Ld. Addl/JCIT(A) has erred in holding the delay in filing of the appeal by the Appellant as 'inordinate' and without 'sufficient cause', and dismissing the appeal without any discussion on merits.*

*6. That on the facts and in the circumstances of the case, the Ld. Addl/JCIT(A) has erred in disposing off the appeal without granting the Appellant Trust an opportunity of being heard.*

*7. That the Appellant craves leave to add to or alter, by deletion, substitution, or otherwise, any or all of the foregoing grounds of appeal at or before the hearing, and to submit such statements, documents, and papers as may be considered necessary either at or before the appeal hearing.*

2. The brief facts of the case are that, the assessee is a trust settled on 11.06.1987 by Ion Exchange (India) Ltd with an objective of providing benefit to the employees of the company. The assessee trust organises programmes of leadership development, public speaking, and programmes for developing personal qualities of the employees of company. Whereas the trust was settled by its authors by settling certain shares of the company with

the directions that income from shares should be used for the purpose of achieving the objectives of the trust. The assessee has filed the return of income on 29.07.2022 for the A.Y 2022-23 disclosing a total income of Rs. 2,08,250/- and the return of income was processed treating the assessee trust as "AOP" and the tax liability was computed at Maximum marginal rate u/sec 167B of the Act and the order U/sec143(1) of the Act was passed on 16-03-2023 assessing the total income of Rs.2,08,251/- and the tax payable determined at Rs. 91,038/- including the interest.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has issued notice and there was no proper compliance by the assessee and also there is a delay in filling the appeal, which remained unexplained. Therefore the CIT(A) has dismissed the assessee appeal as not maintainable. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has not considered the facts that the assessee has received the A.O order u/sec143(1) the Act and has filed the appeal before appellate authorities and the delay was not wanton Act. Further the assessee has filed a request application for condonation of delay. The Ld.AR emphasized that the assessee has good case on merits with

supporting evidences which goes to roots of the case and play a vital role in the decision making and prayed for an opportunity to substantiate before the lower authorities. Per Contra, the Ld. DR relied on the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie, the CIT(A) has passed the order considering the fact that there is no proper compliance by the assessee in spite of providing adequate opportunity of hearing and the delay in filing the appeal was not explained with the reasonable cause. Whereas the assessee has raised grounds of appeal challenging status of the trust treated as "AOP" and the tax liability was computed at Maximum marginal rate u/sec 167B of the Act . The Ld. AR emphasized that there are genuine reasons and the delay was not an wanton Act. The assessee has filed the application for condonation of delay before the CIT(A) referred at Page 5 Para4.6 of the CIT(A) order read as under:

*"4.6 The appellant has filed its reply/ explanation in response to the Column No. 14 and 15 of Form 35 relating to the reasons for delay in filing of the appeal as under*

*"The Appellant is an employee benevolent Trust settled by Ion Exchange India Ltd. The Appellant was settled for carrying out certain activities for the benefits of the employees of the Settlor. Certain shares of the Settlor were settled in the Appellant, with a direction that the income from the shares should be used for the purposes stated therein.*

2. The only source of income of the Appellant Trust are (a) dividend from the shares held in the settlor, and (b) interest on deposits maintained with banks.

3. The beneficiaries of the Appellant are the individual employees of the Settlor. The Appellant would thus fall with Proviso (iv) to Section 164(1) of the Act.

4. Since the inception of the Appellant Trust, it has been offering the income earned by it to tax on slab rate, as provided in Proviso (iv) to Section 164(1) of the Act. However, while filing the tax return for the subject assessment year, the Appellant, by mistake offered its income to tax in the manner provided under Section 1678 of the Act

5. This resulted in the income of the Appellant Trust being erroneously subjected to tax at maximum marginal rate.

6. The return of income filed by the Appellant was processed and intimation order u/s 143(1) of the Income Tax Act was passed by CPC on 16/03/2023. The intimation was served on the appellant electronically on 16/03/2023. Appeal against such order was supposed to be filed within 30 days following the date on which intimation was served i.e, by 15/04/2023.

7. However, the appeal is now being filed with a delay of 271 days. The Appellant states and submits that the delay in filing the appeal is due to mis-interpretation of law by the Appellant. The Appellant was under a bona fide belief that, being a Trust, the Appellant is liable to tax at maximum marginal rate only. The inhouse team of Appellant accordingly put up a note for payment of the demand raised, on 05.04.2023. The Chief Financial Officer of the Company, after examining the matter, raised a doubt on correctness of the demand. Accordingly, a brief was forwarded to the office of its lawyers on 07.04.2023 to opine on correctness of the demand raised.

8. After studying the matter and, the lawyers of the Appellant, vide an e-mail dated 03.05.2023 opined that the demand raised in the impugned order is erroneous. The Appellant held a conference with its lawyers on 08.05.2023 to understand the interpretation and the error committed by the Appellant.

9. Immediately thereafter, the Appellant requested its lawyers to draft the required appeal papers and thereafter the appeal has been filed.

10. The Appellant states and submits that the delay in filing the appeal has arisen due to incorrect interpretation of law, and the Appellant undertook all necessary steps to avail the statutory right of appeal immediately upon noticing the error. It is submitted that the

*delay thus occurred due to circumstances beyond the control of Appellant.*

*11. The assessee submits that there can be no mala fide imputable to the delay in filing the appeal. It is therefore prayed that the delay in filing the appeal may kindly be condoned.*

*12. If the delay is not condoned and the appeals are not adjudicated on merits, the Appellant would suffer irreparable financial loss. The Appellant also submits that, it has more than a prima facie case against the order passed by the CPC.*

*13. In the circumstances of the matter, it is humbly prayed to the delay in filing this appeal may be condoned and the appeal be heard on merits."*

6. We considering the facts, provisions and the contents of the condonation application found that there is a reasonable cause explained and there is no benefit is derived in causing delay in filing appeal before the CIT(A). The Hon'ble Supreme Court in the case of B. Madhuri Goud vs. B. Damodar Reddy (2012) 12 SCC 693, has held that the following principles must be kept in mind while considering the application for condonation of delay;

- (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

- (iv) *No presumption can be attached to deliberate cause of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
- (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation.*
- (xi) *It is to be borne in mind that no one gets away with fraud, is representation or interpolation by taking recourse to the technicalities of law of limitation.*
- (xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on*

*the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

*(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

7. The Hon'ble supreme court in the case of Collector, Land Acquisition Vs. MST Katiji & others (167 ITR 471) (SC) has observed as under :

*“ The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "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. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”*

8. We respectfully follow the observations and ratio of the decisions of Hon'ble Supreme Court and find that the delay in filing the appeal before the CIT (Appeals) by the assessee is supported with sufficient cause and pragmatic approach should be considered for the condonation of delay and accordingly the delay is condoned. Further there could be various reasons for non submission of details which cannot be overruled. Hence considering the principles of natural justice and to meet the ends of justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case along with the evidences. Accordingly, set aside the order of the CIT(A) and restore the disputed issues to the file of the CIT(A) to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and comply with appeal filling rules. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes. Sd/-

Order pronounced in the open court on 04.07.2024.

Sd/-  
**(OMKARESHWAR CHIDARA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 04/07/2024

KRK

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,  
Mumbai