

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “J(SMC)”, MUMBAI
BEFORE SHRI.NARENDRA KUMAR BILLAIYA, ACCOUNTANT
MEMBER**

&

SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 2077/MUM/2024 (A.Y: 2019-20)

&

ITA NO. 2080/MUM/2024 (A.Y: 2020-21)

&

ITA NO. 2078/MUM/2024 (A.Y: 2021-22)

Aman Chambers Premises Co-op.
Soc. Ltd.

113, Aman Chambers, Mam
Parmanand Marg, Opera House,
Mumbai – 400004.

PAN: AAAA0698M

(Appellant)

Vs. The Assistant Director of
Income Tax, CPC, Bengaluru.

The Assistant Director of
Income Tax, CPC, Bengaluru,
Karnataka – 560500.

(Respondent)

Assessee Represented by	:	Shri. Sanjay Parikh
Department Represented by	:	Shri. Sunil K. Agwane (Sr. DR.)
Date of conclusion of Hearing	:	23.07.2024
Date of Pronouncement	:	30.07.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):



1. These three appeals are filed by the appellant/assessee against the orders even dated 09.03.2024, for A.Y. 2019-20 and 2020-21 and order dated 08.03.2024 for A.Y. 2021-22 of Learned Commissioner of Income Tax (Appeals), Addl/JCIT(A)-1 Guwahati, [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”].
2. The appeal pertaining to A.Y. 2019-20 is taken as lead case.
3. The common and only question to be determined in these appeals of the assessee is whether the Ld. CIT(A) vide impugned orders was justified for dismissal of the appeal being barred by limitation and disposing the same in limine. As is evident from the contents of the appeal, there was delay of 1340 days, 739 days and 438 days for A.Y. 2019-20, 2020-21 and 2021-22, respectively.
4. The Ld. CIT(A) in each appeal was of the opinion that the assessee has failed to show any sufficient and reasonable cause of Condonation of Delay and accordingly the appeals were dismissed as non-maintainable and hence not admitted.
5. We have heard the Ld. AR on behalf of the appellant who argued that the Ld. CIT(A) disposed off appeals without affording opportunity of hearing



and has dismissed the application seeking the condonation of delay due to covid pandemic in the relevant assessment years 2019-20, 2020-21 and 2021-22, and also that the accountant of the assessee has expired due to covid and it took time in appointing new accountant who noticed the alleged demand of the revenue against the assessee. It is vehemently argued that the reasons given for Condonation of Delay was sufficient and justified in the given facts and circumstances, hence prayed for setting aside the impugned orders in these appeals. The Ld. AR has relied 10 cases as find mentioned in page no. 1 of the Paperbook in support of his above arguments.

6. The Ld. DR on the other hand relied upon the judgment of the Ld. CIT(A) stating that the said order is perfectly justified as assessee/appellant has failed to show any sufficient cause for inordinate delay in filing the appeals.
7. We have considered the rival submissions and carefully examined the record. On perusal of the Ld. CIT(A) order in all the three appeals it is noticed that the grounds of delay and rejection of the appeal has been considered in para no. 2 under heading Condonation of Delay by the Ld. CIT(A) which is relevant and reproduced as under: –



“2. CONDONATION OF DELAY:

The provisions of section 249(2) of the Act prescribe time-limit within which the appeal is to be filed by the appellant. In the instant case there is delay in filing appeal, in respect to the same, appellant assessee has given explanation in the col. no. 15 to Form 35 that:

“The outbreak of the COVID 19 pandemic in March 2020 significantly impacted the Societys operations. Due to government imposed lockdowns and safety concerns, the Societys office remained closed for a substantial period. This resulted in significant disruption to routine administrative and financial tasks.

Additionally, the Societys longstanding accountant, Mr. Jayraman, who was approximately 75 years old, was unable to attend the office due to age and heightened vulnerability to COVID19.

Sadly, Mr. Jayraman passed away on 20.07.2020. This further hindered the Societys ability to finalize its accounts and file its income tax return within the due date.

Following Mr. Jayramans passing, the Society diligently sought and hired a new accountant. However, due to the complex nature of the Society’s finances and the need to familiarize the new accountant with the Society’s records, there was an unavoidable error in finalizing the audit and filing the tax return.

Thereafter, the above facts came to notice of Society on when the Chartered Accountant was changed and it was only at that time it came to the Societys knowledge that there is demand of Rs. 49,010 in the A. Y. 2019 20 by not granting the Society deduction claimed under section 80P on interest income earned by the Society.

All these facts lead to delay in filing before your good-self, for which we request you to kindly condone.

Being aggrieved by the order of CPC AO, the appellant is in the present appeal and pray that CPC AO be directed to allow the deduction claimed by the Society under section 80P upto interest income earned by the Society from other Cooperative Society and recalculate the demand and also condone the delay for filing an appeal on account of the aforesaid reasons.”



The explanations offered by the appellant in respect of the delay in filling appeal have been gone through. It is noticed that there is inordinate delay of 1340 days for filling of appeal. The appellant has not cared to substantiate its claim of death of Mr. Jayraman, change of the Chartered Accountant and appointment of new accountant as claimed by furnishing corroborative evidence. Also, it is noticed that the appellant has taken plea of Covid-19 for delay in filing the appeal. It is worldwide known phenomenon that the menace of Covid-19 was almost receded by the end of year 2022. Therefore, there was enough time available after 31.03.2022 for filling of the appeal if desired so. During the impugned period for which the condonation of delay is sought for the appellant has not substantiated that there was lull in their activity(ies). From the aforesaid facts, the picture that emerges out is that the appellant is very casual and general in nature. It is also noticed that the assessee appellant has preferred appeal for A.Y(s) 2020-2021 and 2021-22 where also there is delay of 739 and 438 days respectively. This reflects nothing but the negligent attitude of the appellant. The same is also found devoid of any merit as the claim put forward have not been substantiated with necessary evidence. After considering the explanation offered by the appellant and looking to the factual matrix of the case in toto, I am not satisfied that the appellant had sufficient cause for not presenting appeal within the period specified in section 249(2) of the Act and accordingly the condonation of delay being sought for is not granted. Accordingly, the plea of condonation is rejected.”

8. Hon’ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3 of 2020, order dated 08.03.2021, was pleased to direct the condonation of delay on account of covid pandemic and extended limitation period as under: -

- “2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.*
- 3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial*



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Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

9. The present appeal pertains to the A.Y. 2019-20, 2020-21 and 2021-22 and the relevant assessment order dated 01.05.2020, 23.12.2021 and 19.10.2022, respectively. It is in this background the assessee/appellant has sought condonation of delay on account of covid pandemic and due to death of its accountant and the difficulty faced by the assessee as well as its newly appointed accountant during the subsequent period after the covid pandemic.
10. The above observation of the Ld. CIT(A) as noted in para no. 7 hereinbefore shows that the Ld. CIT(A) has adopted a hyper-technical approach while considering the grounds of condonation of delay in the case of the appellant. The right of appeal to the Ld. CIT(A) u/s. 248 is a statutory right granted to the appellant/assessee. The statutory right cannot be denied to an assessee unless there is inordinate delay or gross negligence on the part of the assessee. It is settled law that the rules and procedure is handmade of justice and the adjudicating authorities should not deny a statutory right of appeal on technical grounds. Para no. 61 of judgment of Hon'ble Supreme Court in the case of *Sesh Nath*



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Anr. in Civil Appeal No. 9198 of 2019 order dated 22.3.2023 can be relied with profit.

“61. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute ‘sufficient cause’ or not would dependent upon facts of each case.

There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bonafides can be imputed to the defaulting party.”

Similarly, Para no. 29 and 31 of judgment of Hon’ble Supreme Court in the case of *Sheo Raj Singh (Deceased) Through LRS. & Ors. Vs. Union of India & Anr.* in Civil Appeal No. 5897 of 2015 order dated 09.10.2023 are relevant and reproduced herein:

“29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be



condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the 15 difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

31. *The order under challenge in this appeal is dated 21st December 2011. It was rendered at a point of time when the decisions in Mst. Katiji (supra), Ramegowda (supra), Chandra Mani (supra), K.V. Ayisumma (supra) and Lipok AO (supra) were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [State of M.P. v. Bherulal¹⁴ is one such decision apart from University of Delhi (supra)] which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented*



approach expounded in the aforesaid decisions which have been referred to above. We find that the High Court in the present case assigned the following reasons in support of its order:

- a. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.*
- b. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.*
- c. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.*
- d. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.*
- e. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.”*



11. Nothing contrary has been brought on record by the respondents which may contradict and falsify facts alleged by the appellant in support of seeking condonation of delay. The Hon'ble Supreme Court in the case of *Collector, Land Acquisition Vs. MST. Katiji & Ors.*, [1987] 167 ITR 471 (SC), dated 19.02.1987, was pleased to hold regarding the condonation of delay 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 of 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.”*

12. It is an undisputed fact that due to covid pandemic since March, 2020 till March, 2022, each ordinary person and profession throughout the length and breadth country was affected by the ill effects of the



unfortunate covid pandemic. It is a fact of common knowledge that the normalcy in the functioning of the society was adversely affected and the normal functioning took much time in restoring the proper functioning of individuals, professional and offices. All the appeals under consideration are either directly or indirectly pertains to the same period when covid pandemic created havoc in the society. For these reasons, the liberal approach was required to be taken and the exemption granted by the Hon'ble Supreme Court in *Suo Moto Writ Petition No. 3 of 2020* referred (supra) was required to be extended by the adjudicating authorities including the Assessing Officers, CIT(A) or Tribunals.

13. In the facts and circumstances as discussed above and because of the law laid down by the Hon'ble Supreme Court in *Sesh Nath Singh & Anr. and Sheo Raj Singh (Deceased) Through LRS. & Ors.* referred (supra), we are of the considered opinion that there was sufficient cause for condoning the delay of 1340 days, 739 days and 438 days for A.Y. 2019-20, 2020-21 and 2021-22, respectively for filing these appeals before the Ld. CIT(A) by the assessee.

14. For the above reasons, the impugned order of the Ld. CIT(A) is not sustainable in the eyes of law and accordingly set aside with the directions to restore the case of the appellant on the file of Ld. CIT(A)



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who shall dispose the same on merit after duly considering the material brought on record by the appellant before the Ld. CIT(A). The appellant/assessee shall present its case before the Ld. CIT(A) within 90 days of this order.

15. In the result, ITA No. 2077/MUM/2024, ITA No. 2080/MUM/2024 and ITA No. 2078/MUM/2024 for assessment years 2019-20, 2020-21 and 2021-22, respectively filed by the assessee is allowed in the above terms.

Sd/-

(NARENDRA KUMAR BILLAIYA)
(ACCOUNTANT MEMBER)

Mumbai / Dated 30.07.2024

Karishma J. Pawar, (Stenographer)

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai