

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI. NARENDRA KUMAR BILLAIYA, ACCOUNTANT  
MEMBER  
AND  
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA NO. 2897/MUM/2024 (A.Y: 2018-19)**

**&**

**ITA NO. 2895/MUM/2024 (A.Y: 2019-20)**

**&**

**ITA NO. 2894/MUM/2024 (A.Y: 2020-21)**

**&**

**ITA NO. 2893/MUM/2024 (A.Y: 2021-22)**

Palmera Co Op Housing Society Vs. Circle 19(1), Mumbai Limited	Piramal Chambers, Mumbai – 400012.
Pleasant Place, Ground Floor, 16, N D Road, Mumbai - 400006	

**PAN: AAAAP1848E**

**(Appellant)**

**(Respondent)**

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri. Rajesh Shah</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri. Akshay Tapadiya, Sr. DR</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>25.07.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>07.08.2024</b>

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**



**ITA No. 2897/MUM/2024; A.Y. 2018-19**  
**ITA No. 2895/MUM/2024; A.Y. 2019-20**  
**ITA No. 2894/MUM/2024; A.Y. 2020-21**  
**ITA No. 2893/MUM/2024; A.Y. 2021-22**  
**Palmera Co Op Housing Society Ltd, Mumbai**

1. These four appeals are filed by the appellant/assessee against the orders dated 28.03.2024, for A.Y. 2018-19, 2020-21 and 2021-22 and order dated 29.03.2024 for A.Y. 2019-20 of Learned Commissioner of Income Tax (Appeals), Addl/JCIT(A)-1 Chandigarh, [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”], wherein the Ld. CIT(A) has confirmed the intimation order of CPC u/s. 143(1) of the Act issued to the assessee. All the appeals are heard together as the parties are same and facts are similar, hence, being decided by a common order.
2. All the appeals were dismissed, by Ld. CIT(A) being barred by limitation and the Ld. CIT(A) has not considered the request of the appellant for condonation of delay, which as per submission has occurred due to the covid pandemic and its consequential affects upon the assessee, its members and the persons looking after the accounts. Since the facts and circumstances and the reasons seeking condonation of delay and the order of the Ld. CIT(A) is similar and same in all the appeals, hence, all the four appeals are taken up together in all the cases. The Ld. CIT(A) was of the opinion that the delay in filing the appeal is not condoned as no sufficient cause has been shown u/s. 249(3) of the Act by the appellant



*ITA No. 2897/MUM/2024; A.Y. 2018-19  
ITA No. 2895/MUM/2024; A.Y. 2019-20  
ITA No. 2894/MUM/2024; A.Y. 2020-21  
ITA No. 2893/MUM/2024; A.Y. 2021-22  
Palmera Co Op Housing Society Ltd, Mumbai*

who has failed to file the appeals within prescribed period of limitation u/s. 249(2) of the Act. Accordingly, the appeal has been dismissed in limine and was not admitted.

3. Aggrieved by the impugned order of the Ld. CIT(A) dated 28.03.2024, for A.Y. 2018-19, 2020-21 and 2021-22 and order dated 29.03.2024 for A.Y. 2019-20, the present appeals has been filed. The assessee has approached the Tribunal with the prayer that the Ld. CIT(A) has dismissed the appeal in limine without considering the sufficient cause shown by the appellant for delay in filing the appeal and has therefore prayed for setting aside the impugned orders in each appeal.
4. 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 dismissing the same in limine.
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 condonation of delay due to covid pandemic in the relevant assessment years 2018-19, 2019-20, 2020-



**ITA No. 2897/MUM/2024; A.Y. 2018-19**  
**ITA No. 2895/MUM/2024; A.Y. 2019-20**  
**ITA No. 2894/MUM/2024; A.Y. 2020-21**  
**ITA No. 2893/MUM/2024; A.Y. 2021-22**  
**Palmera Co Op Housing Society Ltd, Mumbai**

21 and 2021-22. 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 four 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: –

*“some time hence Appeal is Delayed We request you to Appellant state that his application u/s 154 of the income tax act 1961 is pending with A.O since long time Appellant states that Society has filed rectification application U/S 154 of income tax act 1961 for allowing deduction 80P and the same is pending long Time. Appellant state that Person who look after income tax Matter has fallen Sick and left the Society Work Secretary of Society has also left the society and Due to*



**ITA No. 2897/MUM/2024; A.Y. 2018-19**  
**ITA No. 2895/MUM/2024; A.Y. 2019-20**  
**ITA No. 2894/MUM/2024; A.Y. 2020-21**  
**ITA No. 2893/MUM/2024; A.Y. 2021-22**  
**Palmera Co Op Housing Society Ltd, Mumbai**

*Covid 2019 Situation New committee has been formed in the Society after long condone the delay.”*

8. Being aggrieved by the order of Ld. CIT(A), the appellant is in appeal and pray that Ld. CIT(A) 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.
9. As per form no. 35, the appeal is delayed for 1390 days, 1010 days, 437 days and 137 days for A.Y. 2018-19, 2019-20, 2020-21 and 2021-22, respectively. For A.Y. 2018-19, the intimation order under section 143(1) was passed on 13.05.2019, which was served upon the appellant on same date. The due date for filing the appeal to CIT(A) against the same was 13.06.2019 but the appeal has been filed on 04.04.2023. For A.Y. 2019-20, the intimation order under section 143(1) was passed on 01.05.2020, which was served upon the appellant on 08.06.2020. The due date for filing the appeal to CIT(A) against the same was 08.07.2020, but the appeal has been filed on 05.04.2023. For A.Y. 2020-21, the intimation order under section 143(1) was passed on 23.12.2021, which was served upon the appellant on same date. The due date for filing the appeal to



ITA No. 2897/MUM/2024; A.Y. 2018-19  
ITA No. 2895/MUM/2024; A.Y. 2019-20  
ITA No. 2894/MUM/2024; A.Y. 2020-21  
ITA No. 2893/MUM/2024; A.Y. 2021-22  
Palmera Co Op Housing Society Ltd, Mumbai

CIT(A) against the same was 23.01.2022, but the appeal has been filed on 05.04.2023. For A.Y. 2021-22, the intimation under section 143(1) was passed on 19.10.2022, which was served upon the appellant on same date. The due date for filing the appeal to CIT(A) against the same was 19.11.2022 but the appeal has been filed on 05.04.2023.

10. It is evident that the assessment order/intimation u/s. 143(1) of the Act are from the dates between from 13.05.2019 to 19.10.2022 and all the assessment orders are therefore directly or indirectly covered by the covid pandemic period duly recognized by the Hon'ble Supreme Court for exemption from the limitation period. For the A.Y. 2020-21 the intimation order is dated 19.10.2022 which is also covered by the post covid effects.

11. 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 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.”*

12. The observation of the Ld. CIT(A) while dismissing the appeal 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 Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & 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. Bherulal<sup>14</sup> 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.”*

13. 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.”*

14. 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



**ITA No. 2897/MUM/2024; A.Y. 2018-19**  
**ITA No. 2895/MUM/2024; A.Y. 2019-20**  
**ITA No. 2894/MUM/2024; A.Y. 2020-21**  
**ITA No. 2893/MUM/2024; A.Y. 2021-22**  
**Palmera Co Op Housing Society Ltd, Mumbai**

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.

15. 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 1390 days, 1010 days, 437 days and 137 days for A.Y. 2018-19, 2019-20, 2020-21 and 2021-22, respectively for filing these appeals before the Ld. CIT(A) by the assessee.

16. 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) 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.



**ITA No. 2897/MUM/2024; A.Y. 2018-19**  
**ITA No. 2895/MUM/2024; A.Y. 2019-20**  
**ITA No. 2894/MUM/2024; A.Y. 2020-21**  
**ITA No. 2893/MUM/2024; A.Y. 2021-22**  
**Palmera Co Op Housing Society Ltd, Mumbai**

17. In the result, ITA No. 2897/MUM/2024, ITA No. 2895/MUM/2024, ITA No. 2894/MUM/2024 and ITA No. 2893/MUM/2024 for assessment years 2018-19, 2019-20, 2020-21 and 2021-22, respectively filed by the assessee are allowed in the above terms. Copy of the order be needed in each case file.

**Order pronounced in the open court on 07.08.2024**

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**(ACCOUNTANT MEMBER)**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**(JUDICIAL MEMBER)**

Mumbai / Dated 07.08.2024  
*Karishma J. Pawar, (Stenographer)*

**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**