

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1245/Bang/2024
Assessment Year: 2021-22

M/s. Lakshmi Gold Khazaana Private Limited No.475, Nanjundi Arcade 6 th Cross Malleswaram Bangalore 560 003 PAN NO : AABCL6692H	Vs.	ACIT Central Circle-1(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Chandrashekar, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	06.08.2024
Date of Pronouncement	:	13.08.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 13.5.2024 for the assessment year 2021-22. The assessee raised various grounds of appeal.

2. Facts of the case are that the assessee company is engaged in the business of buying gold jewellery, filed return of income on 15.2.2022 declaring loss of Rs.94,16,94,153/-. The case of the assessee was selected under CASS and notices u/s 143(2) & 142(1) of the Act were issued. In response to the notices, the assessee had furnished the details called for. The ld. AO passed order u/s 143(3) of the Act on 28.12.2022 by making additions of Rs.91,09,57,302/-.

2.1 Against this assessee went in appeal before Id. CIT(A) where there was a delay of 91 days in filing the appeal before Id. CIT(A). The assessee explained the delay as follows:

“5.1 The appellant sought to justify the delay of 91 days in filing the appeals by stating that they were initially advised not to file an appeal as there was no demand arising from the impugned order. Subsequently, the appellant's Income Tax counsel, while reviewing the files, discovered the impugned order and inquired about the appeal, learning it had not been filed due to the absence of a demand. Upon thorough review, the tax counsel advised the appellant to file an appeal immediately, as the additions were factually and legally could invoke penal proceedings, best interest to challenge the order. The appellant, acting on this professional advice, filed the appeal within a week of receiving it. Given this factual background, it is claimed that the appellant could not file the appeal within the prescribed time, resulting in a delay of about 90 days.”

2.2 The Id. CIT(A) not agreeing with the reasons explained by the assessee dismissed the appeal in limine without admitting the same. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. The assessee has not filed the appeal against the impugned assessment order in time on the reason that there was no demand arising from the said order. However, on consultation with the assessee's counsel, the assessee learnt that the addition is factually and legally sustainable and could invoke penal proceedings and in the best interest of assessee, it is appropriate to file appeal before the first appellate authority.

4. On understanding these facts, the assessee filed appeal before Id. CIT(A) as being a prudent person, with delay of 91 days. The delay is very short delay and not inordinate. Being so, we should take very liberal view of the facts of the case and the delay to be condoned to render substantial justice. It is to be noted that 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.”

4.1 Being so, 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 a vested right for injustice being done because of non-deliberate delay. In our opinion, the reason explained by the assessee is bonafide and accordingly, there is a good and sufficient reason for filing the appeal before the first appellate authority. The delay is condoned. This ground of appeal of the assessee is allowed. However, at this stage, we refrain from commenting anything on merit of the issue raised by the assessee before us. The ground relating to merit will go back to the Id. CIT(A) to decide the same on merit in accordance with law.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 13th Aug, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 13th Aug, 2024.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.