

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2592/MUM/2024
Assessment Year: 2019-20**

Jyoti Record MFG Company Ltd., 249, Balrajeshwar Road, Ghati Pada, Vaishali Nagar, Mulund(W), Mumbai – 400080 (PAN : AAACJ1352M)	Vs.	Assistant Director of Income Tax, Centralized Processing Centre, Bangalore
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rakesh Joshi, CA
Revenue : Shri Ankush Kapoor, CIT, DR

Date of Hearing : 18.07.2024
Date of Pronouncement : 21.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Jaipur vide order no. ITBA/APL/S/250/2023-24/1063453799(1), dated 27.03.2024 passed against the intimation issued by Assistant Director of Income Tax, CPC, Bangalore, u/s. 143(1) of the Income-tax Act (hereinafter referred to as the “Act”), dated 17.05.2020 for Assessment Year 2019-20.

2. Grounds taken by the assessee are reproduced as under:

1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in dismissing the appeal, by not allowing the condonation of delay, without granting opportunity of being heard to the appellant*
2. *On the facts and circumstances of the case as well as in law, the Learned Assessing Officer as well as Learned CIT(A) has erred in computing the capital gain of Rs.13,98,51,320/- on capital assets, by considering the transaction*

as transfer liable for capital gain tax, ignoring the facts and circumstances of the case and provision of law

3. *On the facts and circumstances of the case as well as in law, the Learned Assessing Officer as well as Learned CIT(A) has erred in not appreciating the fact that no tax can be recovered without provision of law and article 265 of the Constitution of India.*
4. *On the facts and circumstances of the case as well as in law, the AO as well as Learned CIT(A) has erred in taking the benefit of ignorance of the appellant and accordingly the same is in violation of the board circular of 14 (XL-35) of 11th April 1955.*

3. From Ground no.1, we note that assessee has contested on ld. CIT(A) not allowing the condonation of delay by granting opportunity of being heard and dismissing the appeal as not maintainable. In this respect, we perused the order of ld. CIT(A) wherein in para 4.1, he has observed that intimation u/s. 143(1) was issued on 17.05.2020 while the appeal was filed by the assessee on 18.03.2024 in Form No.35. This filing is beyond the statutory time limit provided for filing the appeal as per section 249(2)(c), according to which appeal should be presented within 30 days of the following date on which the notice of demand is sought to be appealed, is served. Ld. CIT(A), noted that there is a delay of more than three years and nine months for which there is no sufficient cause in terms of section 249(3) put forth by the assessee for claiming condonation of the said delay though assessee had furnished its justification explaining the delay which has been reproduced in his order.

3.1. From the said reproduced explanation, we note that there is a delay of 1368 days in filing the appeal, before the ld. CTI(A) for the reason that the assessee was in extreme financial distress and its accounting and finance staff looking after the tax matters had resigned on account of non-payment of salaries. Further, during the time when the intimation u/s. 143(1) was issued, pandemic of Covid 19 was in vogue. Offices of the assessee were shut and business was on the verge

of closure. Also, during the period of Covid 19 lockdown, Director of the assessee and person handling tax matters were stuck outside Mumbai having minimal access to the email correspondence and other resources. The things got aggravated further on account of medical issues with the Director of the assessee.

3.2. On the merits of the case, assessee submitted that CPC, Bengaluru has processed the return by alleging the assessee that it had not paid tax on capital gains. However, assessee claimed that there is no transfer of any capital asset during the year, since it was a compulsory transfer undertaken by the financial institutions to recover their loans which is not subjected to capital gain tax. In this respect, assessee further submitted that compulsory acquisition of the asset of the assessee on account of recovery of loans evidently reflected the financial crisis, assessee was going through which also added to the delay caused in filing the appeal. According to the assessee, the reasons for delay were beyond its control and are sufficient cause in terms of section 249(3) for condoning the same and admitting the appeal for its meritorious adjudication.

4. Before us, ld. Counsel for the assessee reiterated the submissions made before the ld. CIT(A) on the issue of condonation of delay. He also submitted that there was no opportunity or occasion to appear before the CPC, Bengaluru to explain its case when the return was processed and assessee was subjected to tax on capital gains arising out of compulsory transfer of assets against recovery of loans by the financial institutions. He also stated that no reasonable opportunity was given by the ld. CIT(A) before dismissing the appeal as not maintainable on account of delay. Ld. Counsel thus prayed that matter may be remitted back to the file of ld. CIT(A) by condoning the delay at the first appellate

stage for its admission and meritorious adjudication on the grounds taken at the first appellate stage. On confrontation of these facts and submissions on the prayer made by the ld. Counsel of remitting the matter back to the file of CIT(A) by condoning the delay, ld. Sr. DR objected on the same, since there is a considerable delay of 1368 days in filing the first appeal.

5. We have heard both the parties and considered the material placed on record. The primary issue before us is on admission of the appeal at the first appellate stage by condoning the delay in filing the appeal by the assessee. Assessee had furnished detailed explanations before the ld. CIT(A) for the delay caused in filing the appeal. We note that out of the delay of 1368 days, considerable period is covered by pandemic of Covid 19 and relief granted by Hon'ble Supreme Court vide Suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022.

6. To address the issue in hand before us, we need to delve into the understanding of the expression "sufficient cause". Sub-section 3 of Section 249 contemplates that the CIT(A) may admit an appeal after expiry of relevant period, if he is satisfied that there was a "sufficient cause" for not presenting it within that period. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally.

6.1. We may make reference to the following observations of the Hon'ble Supreme Court from the decision in the case of *Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353*:

- "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.*
- 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 common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, 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 non-deliberate 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 judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

6.2. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of *N.Balakrishnan Vs. M. Krishnamurthy (supra)*. It reads as under:

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

*A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Iain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

6.3. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

6.4. In light of the above, if we examine the facts then it would reveal that there is a delay of 1368 days in filing of the first appeal by the assessee before the ld. CIT(A). In its submissions as reproduced in the order of ld. CIT(A), assessee has explained the reasons which prevented it in filing the appeal withing the prescribed limitation. Therefore, for the just decision of the controversy, it is incumbent upon us to condone the delay. Considering the said explanation of the assessee, we condone the same and direct the ld. CIT(A) to admit the appeal for its meritorious adjudication.

7. Since the first appeal has been disposed of by the ld. CIT(A) as "dismissed as not maintainable", we remit the matter back to the file of

ld. CIT(A) for its meritorious adjudication. We also direct the assessee to be diligent and cooperative in attending the hearings and make its submissions for expeditious and effective disposal of the appeal. It should not seek adjournments unless warranted by compelling reasons.

8. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 21 August, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 21 August, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai