

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 200/Asr/2024
Assessment Year: 2017-18

Padam Cars Pvt. Ltd.,
Mehta Motors, Bibiwala
Road, Bathinda, Punjab
[PAN: AAFCP 9243C]
(Appellant)

Vs.

Income Tax Officer,
Ward 1(1), Bathinda
(Respondent)

I.T.A. No. 152/Asr/2024
Assessment Year: 2013-14

Waseem Ahmad Bhat SICOP
Mohalla, Bijehara, Anantnag,
Jammu & Kashmir
[PAN: AUTPB 4242Q]
(Appellant)

Vs.

The Assessing Officer NFAC
Delhi JAO The Income Tax
Officer, Udhampur, J & K
(Respondent)

Appellant by : Sh. Sudhir Sehgal, A.R.
Respondent by : Sh. Himanshu, Sr. D.R.
Date of Hearing : 21.08.2024
Date of Pronouncement : 27.08.2024

ORDER

Per Dr. M. L. Meena, AM:

Both the captioned appeals have been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 21.02.2024 & 30.01.2024 in respect of Assessment Years 2013-14 & 2017-18 challenging therein dismissal of its appeal by rejecting on account of condonation of delay without appreciating the reasonable and sufficient cause.



2. There is a delay of 125 days in filing the appeal before the Id. CIT(A). The delay in filing the appeal has been rejected by the Id. CIT(A) by stating that the appellant has not offered any sufficient reasons for such a delay in filing the appeal and it cause grave prejudice to interest of revenue. Accordingly, the Id. CIT(A) has dismissed the appeal in limine.

3. The Id. counsel has submitted an affidavit of the CA, Varun Garg the legal adviser counsel of the appellant/company, which reads as under:

Adm. Panchayat Gurgaon


**Indian-Non Judicial Stamp
Haryana Government**

Date: 17/06/2024

Certificate No.	G0Q2024F1675		Stamp Duty Paid : ₹ 110
GRN No.	117842226		(Rs. Only) Penalty : ₹ 0 (Rs. Zero Only)

Deponent

Name	Varun Garg	Sector/Ward : 60	Landmark : Ireo skyon
H No/Floor	E2506	District : Gurgaon	State : Haryana
City/Village	Gurgaon		
Phone	90*****00		




Purpose : AFFIDAVIT FOR FILING A SELF DECLARATION WITH COMMISSIONER OF INCOME TAX APPEALS to be submitted at Varun garg

The authenticity of this document can be verified by scanning this QR Code Through smart phone or on the website <https://egrashry.nic.in>

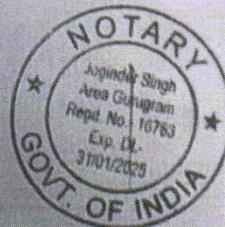
AFFIDAVIT

I, CA Varun Garg S/o Sh. Rakesh Garg R/o E-2 506, Ireo Skyon, Sector-60, Gurgaon, Haryana do hereby solemnly state and affirm as under:-

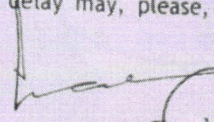


1. That I am practicing Chartered Accountant and I have been engaged in the profession for the past many years.
2. That I had been engaged as an adviser in the case of Padam Cars Pvt.Ltd. for the past few years, which includes Asstt. Year 2017-18.
3. That the order as passed by the Assessing Officer for the above said year was received through electronic mode and the same was handed over to my office for filing the appeal before the Worthy CIT(A). However, due to inadvertent lapse on the part of my staff, the said order was placed in the file of the assessee and due to which, it also skipped from my mind and from the mind of my staff.
4. That in the meanwhile, the show cause notice for levy of penalty u/s 271AAC(1) was received from the Income Tax Officer, Ward-1, Bathinda for the assessment completed u/s 148/143(3). I immediately checked the record of the assessee and found that the assessment order as framed by the Assessing Officer vide order, dated 29.03.2022 was lying therein and, thereafter, I immediately prepared the appeal and filed before the Ld. CIT(A) on 30.08.2022.
5. That the delay in filing the appeal is as under:-

i).	Order u/s 148/143(3) was received on	29.03.2022
ii).	Appeal was to be filed on or before	28.04.2022
iii).	Appeal was filed on	30.08.2022
	Delay in filing the appeal	125 days.
6. That the delay, as such, was on account of the bonafide mistake on the part of my office staff that the assessment order was placed inadvertently in the file and then filing of appeal skipped from my mind and, as such, it is prayed that the delay of 125 days in filing the appeal may, please, be condoned.

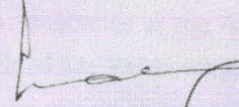


7. That, your goodself's attention is invited to the judgment of Gurfateh films and Sippy Grewal Productions (P) Ltd, in which, it has been held that the assessee will not be treated in default in filing the appeal late and also the delay having been occurred on the part of the mistake of the counsel, the same is highly regretted and the Hon'ble Punjab & Haryana High Court in the case of Manoj Ahuja, reported in 150 ITR 696 held that if there is delay on the part of the counsel, the assessee should not be suffer. Thus, the above said delay may, please, be condoned.


DEPONENT

VERIFICATION:-

That the contents of the above declaration are true to the best of my knowledge and belief and nothing has been concealed therein.


DEPONENT



~~ATTESTED~~
JOGINDER SINGH
ADVOCATE & NOTARY
GURUGRAM DISTT. (HR.)

19 JUN 2024

4. From para 6 of the affidavit, it is evident that the delay was occurred on bonafide mistake on the part of the office staff of the CA, Varun Garg as the Assessment order was placed advertently in the office file and then filing of appeal skipped by the CA, Varun Garg of the company. Accordingly, it is prayed that the delay of 125 days in filing the appeal may be condoned and the matter may be remanded back to the Id. CIT(A) to adjudicate de novo on merits of the case after granting adequate opportunity of being heard. In support, he placed reliance on the judgment delivered by the Hon'ble Punjab & Haryana High Court in the case of Manoj Ahuja, reported in 150 ITR 696, wherein it was observed that if there was a delay on the part of the counsel, the assessee should not be suffered.

5. Per contra, the Id. DR relied on the order of the Id. CIT(A).

6. We have heard both the sides, perused the material on record impugned order and written submission filed before us. Admittedly, the delay of 125 days in filing the appeal before the Id. CIT(A) was occurred due to bonafide mistake on the part of the office staff of the CA, Varun Garg legal adviser as the assessment order was placed inadvertently in the filing of the assessee company due to which it is skipped from the mind of the CA, Varun

Garg as admitted in a notarized affidavit, filed in support of the reasons for the delay as above.

7. The Hon'ble Supreme Court in the matter of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors. (Civil Appeal Nos. 8183-8184 of 2013) has laid down the following principles for condonation of delay:

"The Hon'ble Bench in para 12 of the order has discussed the decision of the Hon'ble Supreme court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Others (Civil Appeal Nos. 8183-8184 of 2013) in which some of the decisions rendered by Hon'ble Apex Court on the principle to be followed while adjudicating the issue of condonation of delay have been discussed as under:-

12. "(a) In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others (supra), a two-Judge Bench observed that the legislature has conferred power to condone delay by enacting Section 5 of the Indian 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 sub serves the ends of justice, for that is the life-purpose for the existence of the institution of courts. The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appellate and refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational common-sense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalize in justice on technical grounds as it is the duty of the court to remove in justice. In

the said case the Division Bench observed that the State which represents the collective cause of the community does not deserve a litigant-non grata status, and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression "sufficient cause".

In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another (2010) (5SGC 459), where a two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribed limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a strict approach where the delay is in ordinate.

In Improvement Trust, Ludhiana v. Ujagar Singh and others (2010) (6SCC786),it has been held that while considering an application for condonation of delay no strait jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party act sand behaves. "

The principles that emanate from the above said decisions are that, in the matter of condonation of delay in filing appeals beyond the limitation period, the courts are empowered to condone the delay, provided the litigant is able to demonstrate that there was "sufficient cause" in preferring appeal beyond the limitation period. The Courts have also held that the expression "sufficient cause" should receive liberal construction so as to advance substantial justice. Hence the question of condonation of delay is a factual matter and the result would depend upon the facts of the case and the cause shown by the assessee for the delay. It has also been opined that generally delays in preferring appeals are required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

8. Having considered an affidavit of CA Varun Garg of the appellant company and following the judgments of Hon'ble Supreme Court (supra), we are of the considered view that the assessee has sufficient reasons for delay of 125 days in filing the appeal before the Id. CIT(A). In our view, the Id. CIT(A) failed to appreciate the sufficiency of reasons for condonation of delay of 125 days as explained before him by the appellant company. In view of that matter, he condoned the delay of 125 days in filing the appeal before the Id. CIT(A) and restored the matter back to the file of the Id. CIT(A) to denovo adjudicate the grounds raised on merits of the case after granting adequate opportunity of being heard to the appellant assessee by appreciating the facts of the case. At the same time, the appellant assessee shall cooperate in the fresh proceedings before the Id. CIT(A).

9. The facts in ITA No. 200/Asr/2024 are similar to ITA No. 152/Asr/2024 except the delay in filing the appeal before the Id. CIT(A) has been only 14 days instead of as against 125 days. The delay of 14 days is condoned. Thus, the findings and observations given in ITA No. 200/Asr/2024 shall be applicable to ITA No. 152/Asr/2024 in mutatis mutandis. Ordered accordingly.

10. In the result, both the appeals filed by the assesseees are allowed for statistical purposes.

Order pronounced in the open court on 27.08.2024

Sd/-
(Udayan Dasgupta)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy

By Order