

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT**

ITA No.1420/Bang/2024
Assessment Year : 2020-21

M/s. Bijapur Dist Police Co-op Society Ltd., BJP Dist Police Co-op Society Gangbawadi Road, Near SP Office, Vijaypur, Vijayapura – 586 101. <b>PAN : AABAB 1338 E</b>	Vs.	ITO, Ward – 1, Vijaypur.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ramesh V. Mudhol, Advocate
Revenue by	:	Shri. Ganesh R. Gale, Standing Counsel for Department.

Date of hearing	:	29.08.2024
Date of Pronouncement	:	29.08.2024

**ORDER**

***Per George George K, Vice President:***

This appeal at the instance of the assessee is directed against the Order of CIT(A) dated 31.05.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2020-21.

2. At the very outset, I notice that CIT(A) has dismissed the appeal of the assessee *in limine* without condoning the delay of 34 days in filing the appeal before him. The learned AR submitted that the reasons given for the delay in filing the appeal before the CIT(A) are genuine. It was submitted that the Assessment Order was passed on 01.09.2022 and the assessee’s Chartered Accountants (CA) were busy during the said period with their audit work. It was stated that assessee is stationed in a small village at Vijayapur and could not get the services of CA in time due to his busyness in finalization of audit reports. Therefore, it was prayed

that for substantial justice, the delay may be condoned and matter be restored to the files of the CIT(A) to consider the issue on merits.

3. The learned Standing Counsel was duly heard.

4. I have heard the rival submissions and perused the material on record. The appeal before the First Appellate Authority (FAA) was dismissed *in limine* without condoning the delay of 34 days. In view of judgment of the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST Katiji and Ors reported in 167 ITR 471 (SC), it is settled principle of law that 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 non-deliberate delay. It was held by the Hon'ble Apex Court that ordinarily a litigant does not stand to benefit by lodging an appeal late. It was further held by the Hon'ble Supreme Court that judiciary is not respected for legalizing injustice on technical grounds but for being capable of removing injustice. It was concluded by the Hon'ble Apex Court that as against the dismissal of appeal for delay, when the delay is condoned, the highest that could happen is that a cause is decided on merits.

5. The judgment relied on by the CIT(A) is distinguishable on facts as in that case, the delay was considerable and there were no genuine reasons that was stated for the condonation of delay. In the case of ITO Ward – 1 and TPS, Bagalkot Vs. Jyoti Credit Co-operative Society in ITA No.838/Bang/2024 (Order dated 24.06.2024), the Bangalore Bench of ITAT had condoned the delay of 62 days in an appeal filed by the Revenue. The reasons stated by ITO for belated filing of appeal read as follows :

*“3.1 The Ld.DR filed affidavit dated 03.05.2024 of the income tax officer, according to which the Ld.AO was held up in completing time barring assessment u/s. 148A from January 2024 to March 2024, due to which the delay occurred in filing the present appeal before this Tribunal.”*

6. Taking into consideration the above submissions of the Revenue, the Bangalore Bench of the Tribunal had condoned the delay of 62 days. The relevant finding of the ITAT reads as follows :

*“3.2 Considering the circumstances under which the delay was caused in filing the appeal before this Tribunal, we are of the opinion that, there was no malafide intention of the revenue in causing the delay to file the appeal. It is also that nothing contrary could be established by the assessee before us.*

*3.3 We place reliance on following observations by Hon'ble Supreme Court in case of Collector Land Acquisition Vs. Mst. Katiji & Ors., reported in (1987) 167 ITR 471 wherein, Hon'ble Court observed 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 a 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.*

*.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."*

*3.4 Considering the submissions by both sides and respectfully following the observation by Hon'ble Supreme Court, we find it fit to condone the delay caused in filing the present appeal as it is not attributable to the revenue."*

7. In the instant case, the appeal was filed belatedly by 34 days only for the reason that CAs were busy in time barring audit work. There are instances where many CAs had sought adjournment of cases even before the Tribunal by stating that they are busy doing audit work (during the aforesaid period). In a Revenue's appeal when delay of 62 days has been condoned in the aforesaid Order of Tribunal for the reason that AO was busy in time barring assessment, for a parity of reasoning, when the CAs are engaged in time barring audit report, due weightage has to be granted for such a plea when condonation application is taken up for adjudication. In the instant case, I am of the view that there is sufficient reason for belated filing of this appeal and hence I condone the delay of 34 days. Since the issue on merits is not adjudicated, I restore the matter to the CIT(A). The CIT(A) is directed to decide the matter on merits. It is ordered accordingly.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(GEORGE GEORGE K)**

**Vice President**

Bangalore.

Dated: 29.08.2024.

/NS/\*

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent           |
| 3. DRP        | 4. CIT                  |
| 5. CIT(A)     | 6. DR, ITAT, Bangalore. |
| 7. Guard file |                         |

By order

Assistant Registrar,  
ITAT, Bangalore.