

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 340/PAT/2023
Assessment Year: 2017-2018**

***Mohammad Sohel Alam,..... Appellant
Parasaray, Amaur, Purnea,
Bihar-854315
[PAN:ARWPA0191R]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-3(1), Purnea,
New Sipahi Tola, Purnea-854301, Bihar***

Appearances by:

*Shri Manish Rastogi, Advocate, appeared on behalf of the
assessee*

*Smt. Rinku Singh, CIT (DR), appeared on behalf of the
Revenue*

Date of concluding the hearing : September 10, 2024

Date of pronouncing the order : September 12, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 27th October, 2023 passed for assessment year 2017-18.

2. It emerges out from the record that the assessee has filed an appeal before the ld. CIT(Appeals) against the assessment order dated 12.12.2019. This appeal was instituted on 13.03.2020. The appeal was stated to be time barred by 62 days. The assessee has applied for condonation of delay on the ground that he was ill and could not file the appeal well in time. The ld. CIT(Appeals) did not condone the delay and dismissed the appeal on the ground that it is time barred.

3. We have duly considered the rival contentions and gone through the record carefully. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld. Commissioner to condone the delay in filing the appeal before the Commissioner. 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. 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.

4. 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 putt 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".

5. 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 Honble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the condonation of delay, then such reasons are to be construed with a justice oriented approach.

6. In the light of above, if we examine the explanation of the assessee, then it would reveal that on account of illness, assessee could not file it well in time. It is also

pertinent to note that in March, 2020, COVID had already struck. There must be some illness before the actual lockdown declared by the Government. The delay was only of 62 days. The ld. 1st Appellate Authority should be sympathetic to the litigant. The assessee will not gain anything by making his appeal time barred. It must be on account of some bonafide mistake and, therefore, we condone the delay. We set aside the issue to the file of ld. CIT(Appeals) for adjudication on merit.

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

Order pronounced in the open Court on 12.09.2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President

Kolkata, the 12th day of September, 2024

*Copies to :(1) Mohammad Sohel Alam,
Parasaray, Amaur, Purnea,
Bihar-854315*

*(2) Income Tax Officer,
Ward-3(1), Purnea,
New Sipahi Tola, Purnea-854301, Bihar*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) Commissioner of Income Tax- ;

- (5) *The Departmental Representative*
(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.