

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1264/Bang/2024
Assessment year : 2020-21

Welcome Traders, 67, Jolly Masjid Road, Jolly Mohalla, Chickpet S.O., Bangalore – 560 076. PAN : AAAPW 6578K	Vs.	The Deputy Commissioner of Income Tax, Central Circle 3(1), Bangaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Akshaya, CA
Respondent by	:	Shri V. Parithivel, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.09.2024
Date of Pronouncement	:	23.09.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 30.4.2024 of the CIT(Appeals)-11, Bangalore, for the AY 2020-21.

2. Briefly stated the facts of the case are that the assessee filed return of income on 14.01.2021 declaring total income at Rs.8,64,780. The case was selected for scrutiny under CASS as mentioned in the assessment order. During the course of assessment proceedings, the AO issued various notices and part details were supplied by the assessee. Notice u/s. 133(6) was also sent to creditors for verification

of purchase and genuineness, some of the creditors did not respond. Therefore the AO doubted the genuineness of transactions and made disallowance u/s. 37 of Rs.1,58,22,786. The AO also made addition u/s. s. 40A(3) of Rs.94,40,000 and completed the assessment on 26.11.2022.

3. Against the assessment order the assessee filed appeal before the CIT(Appeals) ON 14.2.2023 belatedly by 111 days. The assessee filed reasons for condoning the delay which were not accepted by the CIT(Appeals) observing that the appeal of the assessee is not filed as per section 249(3) of the Act and without going into the merits of the case, he dismissed the appeal of the assessee as not maintainable. Aggrieved, the assessee is in appeal before the ITAT.

4. The ld. AR reiterated the submissions made before the lower authorities and submitted that there was no malafide intention in not filing the appeal within the due date.

5. The ld. DR relied on the order of the lower authorities.

6. Considering the rival submissions, we note that the assessee filed appeal before the CIT(Appeals) with delay of 111 days with the reasons for delay, however the ld. CIT(Appeals) has not accepted the reasons and dismissed the appeal as not maintainable. For the sake of convenience we are reproducing below the reasons for delay submitted before the CIT(Appeals) :-

- The appellant most humbly submits that the delay in filing the appeal was neither intentional nor within the control of the appellant. The reasons for the delay are primarily attributable to the following circumstances:
- The appellant, engaged primarily in the trade of scrap materials, possesses limited knowledge of income tax procedural requirements and has historically depended significantly on an external consultant for such matters.
- The appellant completely relied on their tax auditor; a senior Chartered Accountant, to manage all appeal-related procedures.
- The Chartered Accountant was preoccupied with completing the firm's tax audit, which was filed on 07-10-2022, followed by the submission of the income tax return on 04-11-2022. The appellant was informed that the appeal would be pursued subsequent to the filing of the income tax returns.
- Additionally, a search proceeding under Section 132 of the Income Tax Act, 1961, was conducted on the appellant on 09-12-2022. This proceeding required the appellant to devote considerable time to providing multiple statements and documents to the income tax authorities.
- Owing to the search proceedings, it was communicated to the appellant that the income tax returns for the past six years would be reassessed, including for the impugned Assessment Year 2020-21.
- Based on this, the appellant was under the mistaken belief that the assessment already concluded would be reassessed, and thus, there was no necessity to challenge the order issued under Section 143(3). This misunderstanding contributed to further delay in filing the appeal,
- During this period, the appellant also engaged the services of another tax consultant to handle the Search proceedings. It was later clarified that an appeal was required to be filed against the assessment order issued under section 143(3), despite the same assessment year under section 147,

- Consequently, understanding the necessity to file an appeal against the concluded assessment, the appellant submitted the present appeal on 14-02-2023, after a delay of 111 days,"

7. Considering the above reasons, we note that the delay in filing the appeal before the Ld.CIT(A) amounts to 111 days. However, on going through the submissions of the Ld.AR and the affidavit filed by the assessee along with the application for condonation of delay, the delay cannot be considered to be the one caused due to any malafide intention. In fact, we find the reason submitted by the assessee that caused the delay is a mistake on behalf of assessee at the personal level and by his tax consultant. We also note that, upon realising the mistake committed by the assessee's counsel, he immediately took necessary steps to represent his case before the authority. It is further emphasised that the assessee is not a continuous defaulter could also be attributed. It is noted that for the relevant Assessment Year, assessee had filed return of income u/s 139 at Rs. 8,64,780/- on 14.01.2021 during COVID19 period and the AO has made addition of Rs. 2,52,62,766/-. We note that the assessee did not file appeal within the prescribed time u/s. 249 (2) against the assessment order passed by the AO order dated 26.09.2022 and appeal was instituted on 14.02.2023. The Id. CIT(Appeals) has not decided the issue on merits of the case and only dismissed the appeal without condoning the delay. In case of People Education & Economic Development Society Vs. ITO reported in 100 ITD 87 (TM) (Chen), it was held that; "when substantial justice and technical consultation 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 non-deliberate delay".

8. The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not able to file the appeals within the period of limitation. The cause for the delay therefore deserves to be considered, when there exist a reasonable cause, and therefore the period of delay may not be relevant factor. In support, we rely on the decision of Hon'ble Madras High Court in the case of CH vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Hon'ble Madras High Court thus condoned nearly 21 years of delay in filing the appeal. As compared to 21 years, delay of about 1000 to 2000 days cannot be considered to be inordinate or excessive.

9. Hon'ble Madras High Court in the case of Sreenivas Charitable Trust reported in 280 ITR 357 held that, no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the

Hon'ble Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause" should receive a liberal construction. In opinion of this Tribunal, this decision of Hon'ble Madras High Court is applicable to the present facts of the case. A similar view was taken by Hon'ble Madras High Court in the case of Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad).

10. Hon'ble Mumbai Bench of this Tribunal in the case of Bajaj Hindustan Ltd. v. Jt. CIT (AT) reported in 277 ITR 1 condoned the delay of 180 days when, the appeal was filed after the pronouncement of the Judgment of the Hon'ble Supreme Court. It is also to be noted that the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. Hon'ble Supreme Court in the case of Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi reported in AIR 1978 SC 537 held that, non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counter-affidavit opposing the application of the assessee, therefore, as held by Hon'ble Supreme Court, there is sufficient cause for condonation of delay. Hon'ble Supreme Court also observed that; "It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause.

Condonation of delay is the discretion of the Court/ Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not filing the appeal within the period of limitation, the delay deserves to be condoned, irrespective of the duration/period.

11. With the above observations, following the above judgments, in our considered opinion, there exists sufficient cause in the reasons stated by the assessee for the delay in filing appeals and we condone the delay in filing the appeal before the CIT(Appeals). The CIT(Appeals) is directed to decide the appeal afresh as per law. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

12. In the result, the appeal is allowed for statistical purpose.

Pronounced in the open court on this 23rd day of September, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd September, 2024.

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.