

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAIBEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND  
SHRI RAJ KUMR CHAUHAN, JUDICIAL MEMBERI.T.A No.3435/Mum/2024  
(Assessment Year : 2013-14)

Purnima Shetty, United Arab Emirates 605, 6 <sup>th</sup> Floor, Tower 1, Burj Residences, Downtown, Dubai United Arab Emirates PAN : CJKPS4471G	vs	Income-tax Officer-26(2)(4) Room No.318, 3 <sup>rd</sup> Floor, Kautilya Bhavan, C-41 to C-43, G-Block BKC, Bandra (East), Mumbai-400 051
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Assessee Represented by	ShriSanjay Muthe
Department represented by	Shri Suresh Gaikwad, (Sr.DR.)

Date of hearing	14/08/2024
Date of Pronouncement	19/09/2024

**ORDER****PER O.P. KANT (AM):**

This appeal has been preferred by the assessee against the order dated 06/05/2024 passed by the Learned Commissioner of Income-tax (Appeals)-58, Mumbai (in short, 'the Ld.CIT(A)') for A.Y. 2013-14, raising following grounds:-

*"Under the facts and circumstances of the case and in law:*

***Dismissible of application for condonation of delay in filing appeal***

*1. The Comm. of Income-tax (Appeals)-58, Mumbai (CIT(A)) erred in not condoning delay of about 25 months in filing of appeal by the appellant before the CIT(A)*

*2 The CIT(A) erred in failing to appreciate that addition of Rs.20.00.000 and of Rs 91,694 has resulted in double taxation of the said amount in the hands of the appellant and as such, the CIT(A) ought to have condoned the delay in filing the appeal and decided the same on merits*

*The aforesaid grounds of appeal are without prejudice to one another The appellant- trust craves leave to add, to amend, to modify, to alter, to substitute and/or to delete all or any of the aforesaid grounds of appeal at or before the hearing.”*

2. Briefly stated facts of the case are that in view of the cash deposits in the bank account of the assessee and no return of income filed for the year under consideration, re-assessment proceedings were initiated and the Assessing Officer has passed assessment order under section 147 of the Income-tax Act, 1961 read with section 144 on 18/12/2019, wherein he made addition of Rs.32,83,390/- in the hands of the assessee. The assessee filed appeal before the Ld.CIT(A) on 24/02/2024 alongwith request for condoning the delay in filing the appeal. The assessee submitted that she is a 'Non Resident' and was staying in United Arab Emirates (UAE) for almost 25 years. She submitted that she had not earned any income in India above the basic exemption limit and, therefore, no return of income was filed for the year under consideration. Further, she submitted that she had come to India few years back and wanted to make some investments in mutual funds and other securities and, therefore, she obtained permanent account number with the address of one of the investment advisors and she never received the notices issued or the order passed for the year under consideration. She submitted that she came to know about the assessment order

only when she approached another Chartered Accountant in relation to some investment advice. The Ld.CIT(A), however, did not find the above submission of the assessee as sufficient cause for condoning the delay. The Ld.CIT(A) relied on the following decisions:

1. Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd. 1962 AIR 361 (SC);
2. Satbarg Singh v.ITO [2015] 61 taxmann.com 46 (Chandigarh-Trib);
3. T. Kishan v. ACIT, [2012] 23 taxmann.com 383 (Hyderabad)
4. Varma Apparels (India) (P.) Ltd. Vs ACIT [2019] 102 taxmann.com 398 (Bombay)

2.1 Relying on the above decisions, the Ld.CIT(A) dismissed the appeal by observing as under:-

*“4.4 in the case of the assessee, the assessment order dated 18.12.2019 was already available in the e-portal. It was the casual approach of the assessee not to bother about any correspondence of mail received in the e-portal by the assessee. Thus, there was no sufficient reason or cause for the assessee to file the appeal delayed. Therefore, delay of more than 25 months in filing of the appeal to the CIT(A) is not condoned and the appeal is Dismissed.”*

3. We have heard rival submissions of the parties on the issue for condonation of delay in filing the appeal. Before us, the Ld. Counsel for the assessee has filed an affidavit on behalf of the assessee. The relevant part of her affidavit is reproduced as under:-

- “1. I have been residing outside India in the UAE for the last more than 40 years. I am a widow age about 60 years.*
- 2. I have never earned income in India above the basic exemption limit and hence was never liable to file return of income in India. It was only for that reason that no return of income was filed by me for assessment year 2013-14.*
- 3. Some years back, I wanted to make some investments in India in mutual funds and other securities.*

4. With that intention in mind. I approached some investment advisor who told me that I will have to obtain an Income-tax Permanent Account Number (PAN) in India. He further told me that he will arrange to obtain the PAN for me and did so by giving an address which did not belong to me. The said address continued to appear in the Income-tax Department's database till recently after which it has been duly changed. Hence, all Notices in the course of assessment proceedings were directed at that address. I never received those Notices. In fact, I was not at all aware that such Notices have been issued by the Income-tax Department. It is only under those circumstances that there was non-compliance by me to the Notices issued by the Department which never reached me

5. Recently, I approached VHPA & CO LLP a firm of Chartered Accountants (CA firm) for some investment advice. The said CA firm took a review of my account on the Income-tax Department's portal and was surprised to notice several demands outstanding against my name for the said assessment year 2013-14. It was only at that point in time that I became aware of all the facts after they were explained to me by the CA firm and their consequences. Hence, I have now taken steps to rectify the omissions on my part and set the record straight."

3.1 Though the Ld. DR opposed the request of the assessee for condonation of the delay; however, no counter affidavit has been filed by the revenue.

4. Under section 249(2) of the Act, limitation period for filing the appeal before the Ld.CIT(A) has been provided as of 30 days from the date of receipt of the order of the Assessing Officer, but the section 249(3) of the Act empowers the Ld.CIT(A) to condone the delay, if he is satisfied with the assessee on 'sufficient cause' for not presenting the appeal within the limitation period. For evaluating sufficiency of cause for condonation of delay, the Hon'ble Supreme Court in the case of **Collector of Land Acquisition v. Katiji AIR (1987) 167 ITR 471 (SC)** has laid down following six principles:

- (i) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.
- (ii) 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.

*(iii) Every day's delay must be explained does not mean that a pedantic approach should be taken. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

*(iv) 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*

*(v) There is no presumption that delay culpable negligence, or on account is occasioned deliberately, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

*(vi) It must be grasped that judiciary is respected not on account of its pouser to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

4. We find that assessee in the instant case has filed an affidavit to support her contention that due to non receipt of assessment order by her , she could not file the appeal on time. We note that Revenue Department has not filed any counter affidavit against the contention of the affidavit filed by the assessee. The Hon'ble Supreme Court in the case of **Sandhya Rani Barkar v. Budha Rani Debi AIR 1978 SC 537** held that non-filing of affidavit in opposition to an application for condonation of the delay may be sufficient cause for condonation of the delay. The Co-ordinate Bench of the Tribunal in the case of **Bajaj Hindustan Ltd. v. JCIT (2005) 92 ITD 11** has accordingly, condoned the delay of more than 180 days for one of the reason that Revenue had not filed any counter affidavit opposing the application for condonation of the delay. The Hon'ble Madras High Court in the case of **Sreenivas Charitable Trust v Dy. CIT (2006) 154 Taxman 377/280 ITR 357** held that in order to advance substantial justice which is of prime importance, the expression 'sufficient cause should receive a liberal interpretation. The Hon'ble Supreme Court in the case of **OP Kathpailya v. Lakhmir Singh AIR 1984 SC 1744**

has held that refusal to condone the delay results in grave miscarriage of justice, thus it would be a ground to condoning the delay. The Hon'ble Supreme court in the case of **Ornate Traders (P.) Ltd. v. ITO (2008) 312 ITR 193 (Bombay)** held that expression 'sufficient Cause will always have relevancy to reasonableness and actions, which can be condoned by Court and it should fall within realm of normal human conduct or normal conduct of a litigant. In the case of **Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi (1979) 118 ITR 507 (SC)** Hon'ble Supreme Court held that what is to be looked into is whether there is any taint of mala fide or element of recklessness or ruse and if neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause for condoning the delay. The Hon'ble Supreme Court in the case of **Ram Nath Bao v. Gobardhan Rao, AIR 2002 BC 1201** held that by taking a pedantic or hyper-technical view, the explanation furnished by the assessee for condonation of delay should not be rejected particularly where assessee had arguable points of law on merits and refusal for condonation of delay will cause erroneous loss and irreparable injury to the aggrieved party by terminating *lis* at the inception.

4.1 The object of prescribing the time period for filing of the appeal is to expedite the proceedings before the concerned authorities and advance cause of the substantial justice. In view of ratio of the decisions referred above and uncontroverted affidavit filed by the assessee, we feel it appropriate to condone the delay in filing the appeal before the Id. First Appellate Authority.

5. Accordingly, we set aside the order of the Ld.CIT(A) on the issue in dispute and restore the matter back to him for deciding the appeal of the assessee on the merit. The grounds raised are accordingly allowed for statistical purpose.

6. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 19<sup>th</sup> of September, 2024.

Sd/-

Sd/-

(RAJ KUMAR CHAUHAN)	(OM PRAKASH KANT)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 19/09/2024  
Pavanan

**Copy of the Order forwarded to:**

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai