

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1816/Bang/2024
Assessment Year : 2020-21

Shri. Sekaripuram Devaraj Gopalakrishnan, 19-8 Swaraj, Dinnur Main Road, R. T. Nagar, Bangalore – 560 032. PAN : AARPG 2781 P	Vs.	The Income Tax Officer, Ward -6(3)(1), Bangalore.
APPELLANT		RESPONDENT

SP No.58/Bang/2024 (in ITA No1816/Bang/2024)
Assessment Year : 2020-21

Shri. Sekaripuram Devaraj Gopalakrishnan, Bangalore – 560 032. PAN : AARPG 2781 P	Vs.	The Income Tax Officer, Ward -6(3)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri. C. J. Yeswanthram, Advocate
Respondent by	:	Shri. Ganesh R Gale, Standing Counsel for Department.

Date of hearing	:	07.10.2024
Date of Pronouncement	:	08.10.2024

ORDER

Per George George K, Vice President :

This appeal at the instance of the assessee is directed against the Order of CIT(A) dated 22.07.2024 passed under section 250 of the Act. The relevant Assessment Year is 2020-21.

2. At the very outset, we notice that CIT(A) has dismissed the appeal *in limine* without condoning the delay of 188 days in filing the appeal before him. The delay condonation application filed before the CIT(A) reads as follows:

12th July 2023

To,
The National Faceless Appeal Centre,
Delhi.

Respected Sir,

Subject: Application for condonation of delay of 188 days in filing the appeal for Assessment Year ('AY') 2020-21.

Reference: Appellant – Sekariparam Devaraj Gopalakrishnan – PAN
AARPG2781P

With reference to the captioned subject matter, I, most humbly state as under:

1. I am filing this appeal against the order (DIN: CPC/2021/U2/237624917) ('Impugned Order') passed by the Assistant Director of Income Tax, Centralized Processing Center dated 07.12.2022 under Section 154 of the Income Tax Act, 1961 ('the Act').
2. The due date for filing the appeal against the Impugned Order dated 07.12.2022 would be 06.01.2023. The appeal is being filed on 13.07.2023. Hence there is a delay of 188 days, in filing the appeal.

I state that issue in the instant case stems out of a technical glitch in the Income Tax Portal. The sequence of events are narrated in brief:

- (i) On 29.08.2020 – I filed my Return of Income for AY 2020-21 under Section 139(1) of the Act in form ITR-2.
- (ii) On 29.08.2020 – On the same day I filed a revised return ('Revised Return-1') incorporating the details of the prepaid taxes which I had omitted to mention in the earlier return.

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- (iii) On 08.12.2020 I again revised my return of income (Revised Return-2). On this occasion I filed my return in form ITR-3 and I had considered the loss from trading in equity options as business loss and set off the same against the income under other heads of income. The set off of loss against income from other heads resulted in a refund claim of Rs. 3,66,140/-.
- (iv) On 09.01.2021 - I Appellant received an intimation (DIN:CPC/2021/A2/129498297) under Section 143(1) of the Act communicating the fact that the Revised Return-1 has been processed and a refund of Rs. 9,280/- was granted.
- (v) On 11.01.2021 - I filed a rectification request seeking to rectify the intimation dated 09.01.2021 as the CPC had processed a return that had been substituted by a revised return.
- (vi) On 08.04.2021 - I received an intimation (DIN:CPC/2021/V3/161328813) under Section 143(1) of the Act communicating that the Revised Return-2 has been processed and a refund of Rs. 3,66,060/- was granted.
- (vii) On 07.12.2022 - After a period of 17 months had lapsed from the date of filing of rectification request, an order under Section 154 was passed, wherein again the Revised Return-1 was processed and demand of Rs. 3,66,060/- was raised.
4. I state that after the Revised Return-2 was rightly processed on 08.04.2021 I did not have any grievance. The rectification request filed on 11.01.2021 had in fact become infructuous and ought to have been closed by the CPC. However, the same was taken up after a period of 17 months and again the wrong return came to be processed.
5. I state that it is trite law that when a revised return is filed the natural consequence is that the original return would be effaced or obliterated for all purposes under the Act and the revised return would substitute the original

return. After filing of the revised return any processing done under Section 143(1) of the Act can be done only in respect of the revised return. Thus the processing of the Revised Return-1 on 09.01.2021 without noticing the fact that the same has already been substituted by Revised Return-2 was as a result of a technical glitch at the end of CPC.

6. I state that since the issue stems out of a technical glitch at the end of CPC I was of the understanding that the correct course of action would have been to file a grievance with the CPC. I had filed my grievances with the CPC on 23.01.2023, 20.02.2023, 18.04.2023 and 28.05.2023. All the grievances have been closed without resolving the issue faced by me. On 11.06.2023 I had also filed my grievance with the Prime Ministers Grievance Cell on the CPGRAMS portal in this regard. However I did not get any relief.
7. I state that I approached an advocate for advice to resolve the issue. I was advised to file an appeal under Section 246A of the Income Tax Act, 1961 against the order of CPC dated 07.12.2022.
8. I state that the delay of 188 days caused in filing this appeal is only as a result of the fact that I had been pursuing/seeking remedy through the grievance redressal mechanism on the bona fide belief that grievance redressal was the correct course of action. I submit that the time spent on pursuing the remedy qualifies for exemption in term of Section 14 of the Limitation Act, 1963.
9. I submit that the delay was unintentional and was not willful or deliberate and was only due to the fact that I was pursuing an alternate remedy under bona fide belief that it was the correct course of action.
10. The Supreme Court in the case of *Collector of Land Acquisition, Anandraj and another Vs. Katiji and others AIR 1987 SC 1353* has laid down the following principles:

"It is common knowledge that Supreme Court has been making a justifiably liberal approach in matters instituted in the Supreme Court. But the

message does not appear to have percolated down to all the other courts in the hierarchy. As such a liberal approach is adopted for combination of delay in the light of the following 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 case would be decided on merits after hearing the parties.*
- (iii) Every day's delay must be explained does not mean that a parentic approach should be made. Why not every hours delay, every seconds 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, course 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.*
- (v) There is no presumption that the delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. A*

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Appellant does not stand to benefit by restoring to delay. In fact, to some serious ends.

It must be grasped that judiciary is empowered on account of its power to legislate injustice on technical ground because of its capability of removing injustice and is expected to do so.

11. I further state that I prima facie have a good case on merits and a fair chance of succeeding in the appeal.

12. In light of the above reasons, it is most respectfully prayed that delay of 188 days in filing the appeal be condoned and thus render justice.

Thanking You,

Yours Faithfully,


Sekaripuram Devaraj Gopalakrishnan

(Appellant)

3. The learned Standing Counsel was duly heard.

4. We find that the delay of 188 days in filing the appeal before the CIT(A) is only as a result of the fact that the assessee was pursuing / seeking remedy through the grievance redressal mechanism on the bonafide belief that grievance redressal was the correct course of action. On the facts of the instant case, there is “sufficient cause” for the delay in filing the appeal before the CIT(A) and no laches can be attributed to the assessee. Therefore, we condone the delay of 188 days in filing the appeal before the

CIT(A). In condoning the delay, we rely on the following judicial pronouncements :

- QT Vs. K.S.P. Shanmughavel Nadar reported in (1985) 153 ITR 596
- Collector, Land Acquisition Vs. MST. Katiji reported in (1987) 167 ITR 471

5. Since we have condoned the delay in filing the appeal before the CIT(A), the issue on merits needs to be examined by CIT(A). For the aforesaid purpose, the matter is restored to the files of the CIT(A). It is ordered accordingly.

SP No.58/Bang/2024

6. Since we have disposed off the Income Tax Appeal, the above stay petition is dismissed as infructuous.

7. In the result, the appeal of the assessee is allowed for statistical purposes and SP is dismissed as infructuous.

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

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(GEORGE GEORGE K)
Vice President

Bangalore,
Dated : 08.10.2024.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.