

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 573/MUM/2024 (A.Y: 2018-19)**

Monterossa Premises Co-operative Society Limited Plot No. 353(6), Monterossa, 90 Feet Road, Pant Nagar, Ghatkopar, East, Mumbai – 400075.	Vs.	ADDL/JCIT (A) – 2 ITO 27(2)(1), Tower No. 6, 4 th Floor, Vashi Railway Station Complex, Vashi, Mumbai – 400703.
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PAN: AACAM3102E

(Appellant)

(Respondent)

Assessee Represented by	:	Shri. Vilas Utekar
Department Represented by	:	Shri. Ashok Kumar Ambastha – Sr. AR.
Date of conclusion of Hearing	:	30.07.2024
Date of Pronouncement	:	14.10.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 12.12.2023 of Learned Commissioner of Income Tax (Appeals), ADDL/JCIT (A)-2 Jaipur [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as



“the Act”] for the A.Y. 2018-19, wherein the appeal of the assessee by the Ld. CIT(A) was dismissed as not maintainable because it was found that the appeal has been filed beyond the time limit permitted u/s. 249 of the act without any sufficient cause for condonation of delay.

2. The appellant is a Co-operative Housing Society. The appellant has filed its return of income for A.Y. 2018-19 on 31.10.2018 declaring an income of Rs. 10,31,990/-. The return was processed u/s. 143(1) on 12.07.2019 and the AO had disallowed the claim u/s. 80P (2)(cii) amounting to Rs. 50,000/-. Aggrieved by the said order of the Ld. AO, the appellant has filed the appeal before the Ld. CIT(A) alongwith application for condonation of delay which is reproduced as under:

“That the order of intimation u/s 143(1) of the Income Tax Act, 1961 was passed on 12.07.2019 for the above-mentioned period. There was a communication gap between the representative and the committee member. Hence gathering information and preparation of appeal documents took more time. Under the circumstances we were unable to file appeal within the time limit. We request you to condone delay & kindly accept our appeal.

We also request to condone the delay to meet ends of natural justice, we humbly request you to kindly condone delay on genuine reason, accept appeal & oblige.”

3. The Ld. CIT(A) did not find those grounds justified and sufficient cause for condonation of delay and has dismissed the appeal without



considering the merit of the appeal. Aggrieved by the said impugned order, the assessee is in appeal before us and has raised following grounds in the appeal:

“On facts and in law learned CIT-Appeals erred in not condoning the delay in filing appeal, without any inquiry or finding in relation to reason and cause shown by appellant and in consequent refusal to admit the appeal.”

4. It is argued by the Ld. AR that there was sufficient cause for condonation of delay as mentioned in application filed by the assessee before the Ld. CIT(A) and the impugned order is therefore liable to be set aside and an opportunity of hearing need to be granted. The Ld. DR has relied upon the judgment of the Ld. CIT(A) stating that there was no sufficient cause for condonation of delay and the judgment is legally perfect.
5. We have considered the rival submissions made on behalf of the appellant as well as the respondent. The observation of the Ld. CIT(A) shows that the Ld. CIT(A) has adopted a hyper-technical approach while considering the grounds of condonation of delay in the case of the appellant. The right of appeal to the Ld. CIT(A) u/s. 248 is a statutory right granted to the appellant/assessee. The statutory right cannot be denied to an assessee unless there is inordinate delay or gross negligence on the part of the assessee. It is settled law that the rules and procedure is handmade of



justice and the adjudicating authorities should not deny a statutory right of appeal on technical grounds. Para no. 61 of judgment of Hon'ble Supreme Court in the case of *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.* in Civil Appeal No. 9198 of 2019 order dated 22.3.2023 can be relied with profit.

“61. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute ‘sufficient cause’ or not would dependent upon facts of each case.

There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bonafides can be imputed to the defaulting party.”

6. Nothing contrary has been brought on record by the respondents which may contradict and falsify facts alleged by the appellant in support of seeking condonation of delay. The Hon'ble Supreme Court in the case of *Collector, Land Acquisition Vs. MST. Katiji & Ors., [1987] 167 ITR 471 (SC), dated 19.02.1987*, was pleased to hold regarding the condonation of delay 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 of 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."*
7. In the facts and circumstances as discussed above and because of the law laid down by the Hon'ble Supreme Court in *Sesh Nath Singh & Anr. and Sheo Raj Singh (Deceased) Through LRS. & Ors.* referred (supra), we are of the considered opinion that there was sufficient cause for condoning the delay for filing this appeal before the Ld. CIT(A) by the assessee.
8. For the above reasons, the impugned order of the Ld. CIT(A) is not sustainable in the eyes of law and accordingly set aside with the directions to restore the case of the appellant on the file of Ld. CIT(A) who shall dispose the same on merit after duly considering the material brought on record by the appellant before the Ld. CIT(A). The appellant/assessee shall present its case before the Ld. CIT(A) within 90 days of this order.



9. In the result, appeal filed by the assessee is allowed in the above terms.

Order pronounced in the open court on 14.10.2024

Sd/-
(PRASHANT MAHARSHI)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 14.10.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai