

**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.1279/Bang/2024
Assessment year : 2013-14

Narayanappa Govindaraju, No.101, Divyasree Residency, H.D. Devegowda Road, R.T. Nagara, Bangalore – 560 032. PAN: AALPG 1717H	Vs.	The Deputy Commissioner of Income Tax, Circle (1)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravindra Hegde, CA
Respondent by	:	Shri D.K. Mishra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.09.2024
Date of Pronouncement	:	22.10.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated of the CIT(Appeals)-11, Bangalore for the AY 2013-14 not condoning the delay and dismissing the appeal as not maintainable.

2. Briefly stated the facts of the case are that the assessee filed return of income u/s. 139(1) on 04.04.2014 declaring gross total income of Rs.8,83,217. A search was conducted on 09.05.2018 in the

case of T. Suresh, Bangalore in connection with search proceedings in the group case of T. Suresh and Others. Notice u/s. 153C of the Act was issued on 31.08.2021 and assessee filed return of income on 10.03.2022 declaring total income of Rs.7,73,220. Thereafter other statutory notices were issued. During the course of assessment proceedings u/s. 153C the AO assessed income at Rs.6,41,08,220 and passed order on 27.03.2022.

3. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA) on 20.06.2022 and in Form 35 date of service of order/notice of demand was mentioned as 28.03.2022 and challan was paid on 19.04.2022. The Id. FAA observed that there was a delay of 85 days in filing appeal and noted the reasons for delay submitted by the assessee in para 2 of his order due to health issue and assessee is 64 years old. In response to notices, the assessee responded discussing the facts of the case. As per Id. FAA, the assessee was unable to justify the inordinate delay of 85 days with sufficient cause and accordingly he did not condone the delay and dismissed the appeal as not maintainable. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR submitted that the assessee is 64 years old and due to ill health he could not file the appeal in time and the Id. FAA has not considered the ill health of the assessee. He also filed medical prescription dated 17.02.2024 issued by Manipal Hospital in this

regard. He also relied on the judgment of coordinate Bench in J C R Drillsol P. Ltd. [2024] 164 taxmann.com 283 (Bang. Trib.).

5. The Id. DR relied on the order of the lower authorities and submitted that the assessment was completed u/s. 153C of the act pursuant to search u/s. 132 and therefore assessee must have been aware of the income tax proceedings and filed appeal within time. During the appellate proceedings before the FAA the assessee could not file any cogent material to prove the ill health of the assessee.

6. Considering the rival submissions, we note that the Id. FAA has not condoned the delay of 85 days in filing the appeal. However the assessee explained the reasons in Statement of Facts about the delay. We also note from Form 35 that the assessee paid the necessary amount towards appeal fee on 19.04.2022 which is within 30 days of assessment order passed on 27.03.2022. It is clear from Form 35 that the intention of the assessee was to file appeal within time. The assessee has furnished medical prescription issued by Manipal Hospital. Another medical prescription dated 25.06.2024 issued by Dr. C.A. Chethan is also filed along with condonation application before us which is placed at page 91 & 94 of PB. Similar issue was decided by the coordinate Bench of this Tribunal in the case of J C R Drillsol (P) Ltd. (supra) wherein it was held as under:-

“We have perused the submissions advanced by both sides in the light of records placed before us. Admittedly there is considerable delay in the appeals filed before the Ld.CIT(A).

8. On examining whether the reason stated by the assessee in condonation petitions are sufficient to condone the delay and there exists sufficient cause

for not presenting the appeals within the period of limitation under the statute, the assessee must show that it was diligent in taking appropriate steps and the delay was caused notwithstanding with its due diligence. If it appears to be guilty of laches or negligence and does not take appropriate steps to pursue its remedy till about the close of the period prescribed for filing of appeal, it must be prepared to have its remedy barred without expecting condonation. Still, it is for the party concerned to explain the reasons for delay and it is not the function of concerned authorities often to find cause for delay. The Court/authority has to examine whether the sufficient cause has been shown by the party for condoning the delay, and whether such cause is reasonable or not. In the present case in hand, the assessee explained the delay in filing the appeals before the ld. CIT(A) was on the reason that the assessee presumed the appeals were filed by the representative who was handling the case at that point of time, and it was only on receipt of the recovery notice that the lapse was realized. This being the position, it constitutes a sufficient cause for filing the appeals belatedly.

Further, on perusal of the affidavit filed by the then representative, we are of the opinion that due to the circumstances that existed, the lapse that occurred on behalf of the representative cannot be attributed to the assessee for which assessee could be punished.

9. In case of People Education and Economic Development Society (PEEDS) v. ITO [2006] 100 ITD 87 (Chennai), 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".

10. 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 Honble Madras High Court in the case of CIT v. K.S.P. Shanmugavel Nadai [1987] 30 Taxman 133/[1985] 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. Honble 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.

11. Hon'ble Madras High Court in the case of Sreenivas Charitable Trust v. Dy. CIT [2006] 154 Taxman 377/280 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] 118 Taxman 622/248 ITR 681 (Madras).

12. Hon'ble Mumbai Bench of this Tribunal in the case of Bajaj Hindusthan Ltd. v. Jt. CIT [2005] 92 ITD 411/277 ITR 1(A.T.), 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 v. Smt. Sudha Rani Debi 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. "

13. Hon'ble Supreme Court has clarified the distinction between an 'explanation' and an 'excuse', emphasizing that, mere excuses wouldn't suffice; a satisfactory and acceptable explanation was required. The Court added, "there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. We therefore feel that we feel that the reasons assigned by the assessee and the then representative for condonation of delay on account of the assessee and inability to present the appeals within time, deserves consideration.

We are therefore of the view that, there is a reasonable cause in filing the appeals belatedly before ld. CIT(A), as delay was neither willful nor wanton but was due to the circumstances beyond the control of the assessee.

14. It is noted that there is no malafide intention on behalf of assessee in not filing the appeals before Ld.CIT(A) within time. In our opinion there is a sufficient cause for condoning the delay as observed by Hon'ble Supreme

Court in case of Mst. Katiji (Supra) in support of his contentions, wherein, Hon'ble Court observed 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 a 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.*

.....l.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. "

15. In view of the above discussion, we condone the delay in filing the appeals before ld. CIT(A) belatedly and the appeals are admitted for adjudication by exercising the power u/s 253(5) of the Act. The Ld.CIT(A) dismissed the appeal without considering and appreciating the contentions urged by the assessee in the affidavit filed before him. Consequently, the impugned orders are in violation of principles of natural justice, and the same deserves to be quashed. We thus remit the entire issue disputed in all these appeals to the file of Ld.CIT(A) to decide afresh in accordance with law after giving a fair opportunity of being heard to the assessee.

Accordingly, the delay in filing the appeals before Ld.CIT(A) is condoned."

- 7. Considering the facts of the case and in the interest of justice, we condone the delay in filing the appeal before the FAA. We remit the issue to the ld. CIT(Appeals) for fresh consideration on merits and decision as per law.**

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

Pronounced in the open court on this 22nd day of October, 2024.

(GEORGE GEORGE K.)
VICE PRESIDENT

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 22nd October, 2024.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.