

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI, JM &
SMT. RENU JAUHRI, AM**

I.T.A. No.4199/Mum/2024
(Assessment Year: 2015-16)

I.T.A. No.4200/Mum/2024
(Assessment Year: 2016-17)

Kishor Subhash Bane C-202, Shree Complex CHS, Plot No. 106-112, Sector-14, Kamothe, Navi Mumbai-410209. PAN : AMGPB3903M	Vs.	ITO, Ward- 27(2)(1), Mumbai.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri K.Gopal & Shri Akhilesh
Deshmukh, AR

Revenue / Respondent by : Ms. Usha Gaikwad, Sr.DR

Date of Hearing : 14.10.2024

Date of Pronouncement : 25.10.2024

ORDER

Per Beena Pillai, JM:

Present appeals filed by the assessee arised out of separate order dated 28/06/2024 passed by the Ld.CIT(A) -2/Ahmedabad for assessment years 2015-16 and 2016-17.

2. At the outset the Ld.AR submitted that there was delay of 70 months for assessment year 2015-16 and 60 months for assessment year 2016-17, in filing appeals before the Ld.CIT(A). It is submitted that, the assessee is a non-resident during the relevant period residing and employed in Indonesia, since 2013. During the relevant assessment years, the assessee remitted his salary in US Dollars to India. It is submitted that assessee's sister was handling the income tax matters for assessee and she wrongly offered the remittance as income under the head salary.

2.1. The Ld.AR, on behalf of the assessee submitted that, it was assessee's sister who was filing the returns for the relevant assessment years. He submitted that the CPC under 143 (1) processed the returns on 21/05/2017 and 29/11/2017 respectively for assessment years 2015-16 and 2016-17 raising tax demand in the hands of the assessee.

2.2. Assessee's sister subsequently filed rectification application under the belief that, the amount remitted by her brother (assessee) from Indonesia out of the salary income earned by the assessee in Indonesia, the same was not taxable in India. It is submitted that, the CPC did not process the rectification application filed by the sister of assessee. Subsequently, she approached the jurisdictional Income tax Officer at Navi Mumbai, and submitted letter dated 26/06/2017 requesting to pass the rectification order for the years under consideration.

2.3. The Ld.AR submitted that, the CPC however still did not process the rectification application. As no correspondence was received on email of the assessee, it was presumed by assessee's sister that the same was accepted by the Ld. AO.

2.4. Subsequently, when the assessee had to link adhar with PAN, it came to his knowledge that an outstanding liability of Rs.4,04,070/-for assessment year 2015-16 and Rs.1,73, 680/-for assessment year 2016-17 was reflecting. The assessee immediately proceeded to file the appeal before the Ld. CIT(A) against the order under section 143 (1) of the act, thereby causing delay of 70 months for assessment A 2015-16 and 60 months for assessment year 2016-17.

3. The Ld.CIT(A) did not appreciate the bona fides on behalf of the assessee and dismissed the appeals filed by the assessee as non-maintainable under the provisions of section 249 (2) of the act.

Aggrieved by the orders of the Ld.CIT(A), assessee preferred appeals for both the years under consideration before the this *Tribunal*.

4. The Ld.AR submitted that, the assessee filed all relevant information to substantiate the reasonable cause in the delay in filing the appeals before the Ld.CIT(A), which was not considered. The Ld.AR thus prayed for the issues to be considered on merits by admitting the appeals of the assessee.

4.1. On the contrary, the Ld.DR vehemently opposed the condonation delay caused in filing appeals before the Ld. CIT(A), for the years under consideration. We have perused the submissions advanced by both sides in the light of records placed before us.

5. From the affidavits filed by assessee's sister although the years under consideration, we note that, there does not arise any malafide intention on behalf of assessee in not filing appeals before the Ld.CIT(A). In fact assessee sister was alert enough and had filed necessary applications before the Ld. AO and thereafter the receipt of information under section 143 (1) of the act went unnoticed. It is also noted that assessee is not gaining any benefit by not filing appeals before the Ld. CIT(A) and therefore malafide intention does not exist in the present facts of the case.

5.1. Nothing is brought on record to establish any malafide intention on behalf of assessee or his sister. The Ld.DR could not controvert the submissions made by the assessee's sister in her affidavits filed, along with the application seeking condonation of delay for the years under consideration.

5.2. In our view, the assessee made out reasonable cause for the delay caused in filing the appeals before the Ld.CIT(A). Nothing to establish anything contrary is filed by the revenue before this *Tribunal* by way of the assessee. In our opinion, there are sufficient reasons to condone the delay, as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition*

Vs. *Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471. Reliance is placed on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 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 :

Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

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.

.....1.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 appellants or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

5.3. We note that the procedural law pertaining to the limitation has been drafted to construe it strictly, the fact remains that, considering such technicalities will not advance the cause of justice.

5.4. We take support from the observations of *Justice Krishna Iyer* wherein he has quoted at various occasion while dealing with technicalities that “*any interpretation that alludes substantive justice is not to be followed and that substantive justice must always prevail over procedural technicalities*”. Even *Hon’ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 has laid down a ratio of similar principles. Respectfully following the thoughts propounded by Late *Hon’ble Justice Krishna Iyer*, as well as various decisions of *Hon’ble Supreme Court* on similar issues, we condone the delay caused in filing the present appeals before Ld.CIT(A) form or the years under consideration.

5.5. Considering the submissions by both sides and respectfully following the observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals as it is not attributable to the assessee. We therefore direct the Ld. CIT(A) to consider the issues raised by the assessee on merits and to pass detailed order in accordance with law. The assessee is also directed to file all relevant information/details substantiate his claim before the

1st appellate authority. Needless to say that proper opportunity of being what must be granted to assessee.

Accordingly the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 25-10-2024.

**Sd/-
(RENU JAUHRI)
Accountant Member**

**Sd/-
(BEENA PILLAI)
Judicial Member**

25/10/2024
*SK, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai