

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1626/Bang/2024
Assessment year : 2020-21

Coregeo Tech (India) Pvt. Ltd., # 58, Ground Floor, G Block, Behind HDFC Bank, Sahakaranagar, Bengaluru – 560 092. PAN : AAHCC 0923E	Vs.	The Income Tax Officer, Ward 2(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar S.V., Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.10.2024
Date of Pronouncement	:	28.10.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 26.06.2024 of the Addl./JCIT CIT(Appeals)-4, Kolkata, for the AY 2020-21 in not condoning delay in filing appeal and dismissing the appeal as unadmitted.

2. Briefly stated the facts of the case are that the assessee filed return of income on 15.02.2024 which is within the extended due date

for filing return of income declaring total income of Rs.93,80,720. Return was processed on 06.08.2021 and rectification order u/s. 154 dated 07.02.2022 was passed by the CPC making disallowance of delayed employees contribution under the PF Act u/s. 36(1)(va) of Rs.21,36,149 and disallowance of Rs.6 lakhs u/s. 40(a)(ia), raising a demand of Rs.12,91,390.

3. The assessee filed appeal on 14.06.2023 before the First Appellate Authority (FAA) with a delay of 462 days. During the appellate proceedings, the ld. FAA issued notices and called for condonation petition with reasons for the delay. He observed that in sl.nos. 14 & 15 of Form 35 assessee has claimed there was delay in filing appeal and grounds for condonation of delay are filed separately, but no such grounds were uploaded with Form 35. He also called for the assessee's explanation regarding disallowance u/s. 36(1)(va) in view of the Hon'ble Supreme Court judgment in the case of M/s. Checkmate Services Ltd. v. CIT dated 12.10.2022 and regarding the disallowance u/s. 40(a)(ia) of the Act. However, since there was no response from the assessee, the ld. FAA rejected condonation of delay for want of assessee's submissions and dismissed the appeal as unadmitted. Aggrieved, the assessee is in appeal before the ITAT.

4. The assessee has filed condonation petition for delay in filing appeal before the CIT(Appeals) along with affidavit as follows:-

“ 1. The order u/s 154 has been passed by the CPC (Assessing officer) for AY 2020-21, dated 07/02/2022 was received by the appellant on 07/02/2022.

2. In case where the period of limitation would have expired between 15/03/2020 and 28/02/2022, a period of 90 days from 01/03/2022 shall be granted to all persons.

The due date for filing an appeal before the Hon'ble CIT(A) was on 30/05/2022. However, the appellant filed this appeal only on 14/06/2023 with a delay of 380 days.

4. Thereafter the employee of the appellant was left the office and new employee has not known the filing of the appeal, not received any notice by post or courier, The Assessee has received the notice for recovery of outstanding demand dated 06/02/2023 through portal, authorized person was not aware of that and also received a call from the department in the month of June to pay the outstanding demand, within 15 days from the reminder call, the Assessee has filed appeal before CIT(A) for AY 2020-21. Herewith we have attached recovery notice for your reference.

5. It is submitted that there was no malafide intention to file the appeal belatedly on 14/06/2023, rather the appellant was prevented by reasonable cause in filing the appeal on time. It is humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condone the delay of 380 days in filing the appeal, i.e. up to 14/06/2023.

6. It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the appellant would be put to great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondent if this application of condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition vs. MST.Katiji and Others (1987) 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507. Further the appellant relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733.”

5. Further, the Id. AR submitted that return was filed by the assessee within the due date. The assessee is not liable for deduction

of PF and ESI Act as employees contribution. The assessee got registration in the office of EPF on 02.07.2020 and date on which employment strength crossed 19 is 01.07.2020 as evident from the EPF certificate placed in the appeal set at page No. 40 and 41. The liability for deduction and deposit of P. F. u/s 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act cannot be fastened to the assessee unless there is no statutory liabilities. He further submitted that the tax auditor wrongly reported that the employees contribution to PF and ESI has not been deposited within time and when he came to know of the same, he immediately revised Form 3CD and reported Nil in serial No. 20 (b) of the Form No. 3CD. He further submitted that the assessee has made disallowance u/s. 40(a)(ia) of the Act OF Rs. 6,00,000 which is 30% of Rs, 20,00,000 offered as income. The ld. AR submitted the delay may be condoned and appeal be remitted to ld. CIT(Appeals).

6. The ld. DR relied on the order of the lower authorities and stated that the assessee's submission that tax auditor has wrongly reported the payment of PF details under serial No. 20b of Form No. 3CD cannot be accepted.

7. Considering the rival submissions, we note that the return of income was processed by the CPC on 06.08.2021 u/s 143(1). The assessee filed rectification application u/s 154 and order was passed on 07.02.2022. The assessee filed first appeal on 14.06.2023 with delay. The ld. CIT(Appeals) has not decided the issue on merits of the case and only dismissed the appeal without condoning the delay since there

was no response from the assessee side and opportunities were granted to the assessee for explaining the reason for delay in filing the appeal and there was no explanation from the assessee side. Assessee filed an affidavit dated 17.10.2024 for condonation of delay of 380 days in filing the appeal before the CIT(Appeals). On going through the reasons for the delay, we note that as per affidavit filed, the assessee has sufficient cause in not filing the appeal within time. We noted that in case of People Education & Economic Development Society Vs. ITO reported in 100 ITD 87 (TM) (Chen), 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".

8. The Hon'ble Madras High Court in the case of Sreenivas Charitable Trust reported in 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) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad)*.

9. Hon'ble Mumbai Bench of this Tribunal in the case of *Bajaj Hindustan Ltd. v. Jt. CIT (AT)* reported in *277 ITR 1* 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 vs. Smt. Sudha Rani Debi* reported in *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.

10. Following the above judgments, in our considered opinion, there exists sufficient cause in the reasons stated by the assessee for the delay in filing appeals and we condone the delay in filing the appeal before the CIT(Appeals). The CIT(Appeals) is directed to decide the appeal on merits as per law. The assessee is directed to file necessary documents that would be essential and required for substantiating its case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

11. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 28th day of October, 2024.

Sd/-
(SOUNДАРARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th 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.