

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No. 3274/Del/2024, (A.Y.2015-16)**

Ms. Kenzo International D-7 Udyog Nagar, main Rohtak Road, New Delhi PAN No: AAHFK0665L	Vs.	Deputy Commissioner of Income Tax, Circle- 43(1), Civic Centre, Delhi
(Appellant)		(Respondent)

Appellant by	Sh. S. S. Nagar, CA and Sh. Gaurav Sachdeva
Respondent by	Sh. Om Prakash, Sr. Dr

Date of Hearing	07/11/2024
Date of Pronouncement	12/11/2024

ORDER

PER YOGESH KUMAR U.S., JM :

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(A)", for short], Addl/JCIT(A), Bhubaneswar, dated 15/05/2024 for the Assessment Year 2015-16.

2. In the present Appeal, the sole grievance of the Assessee is against dismissal of the Appeal by the Ld. CIT(A) on the ground of delay in latches of 1987 days in filing the appeal before the Ld. CIT(A). The Ld. Counsel for the Assessee submitted that the Assessee came to now regarding non filing of

the Appeal against the assessment order u/s 143(1) of the Act only when new Income Tax Consultant was appointed to review the tax records who have informed that no appeal has been filed in respect of the assessment order in question. Immediately after coming to know about the said fact the Assessee filed the Appeal before the Ld. CIT(A) seeking for condonation of delay as the Assessee was under the false impression that appeal has been already filed. The Ld. Counsel for the Assessee has also filed an affidavit sworn by the said consultant to that effect. The Ld. Counsel for the Assessee further submitted that in the case of the sister concern ie: Mickotake Balaji Powertronics Pvt. Ltd. (formerly known as Balaji Powertronics Vs. ACIT) in ITA No. 2208/Del/2023, the Tribunal has condoned the delay of 1441 days on the similar explanations given by the Assessee thereon, thus, sought for condoning the delay in filing the Appeal before the Ld. CIT(A) and prayed to remand the matter to the file of the Ld. CIT(A) to decide the issue afresh on its merits.

3. Per contra, the Ld. Departmental Representative submitted that the Assessee is a corporate entity which cannot escape away from its responsibility to file the Appeal on time and the reason assigned for condonation of delay in an afterthought, which cannot be believed, thus, sought for dismissal of the Appeal.

4. We have heard both the parties and perused the material available on record. The Co-ordinate Bench of the Tribunal in Assessee's sister concern in ITA No. 2208/Del/2023 while condoning the delay of 1411 days held as under:-

“6. From the conspectus of the circumstances, we are of the view that the assessee has demonstrated the circumstances resulting in delay in filing the captioned appeal in question. Needless to say, there can be no straight jacket formula to come to conclusion as to whether the sufficient and good grounds have been made out or not while seeking condonation of delay. We do not see any malafide written large on the conduct of the assessee for alleged delay. It is trite that an attempt should also be made to allow the matter to be contested on merits rather than to throw it out on such technicalities. Apart from the above, the assessee does not stand to gain in any manner whatsoever by not filing appeal within the period of limitation. Keeping in view the diligent attendance in the assessment proceedings, one cannot say that the assessee had been callous and negligent in prosecuting the matter.

7. At this point, reference is made to the decision of the Hon'ble Supreme Court in [Improvement Trust Vs. Ujagar Singh](#), (2010) 6 SCC 786 (SC) and [Bombay Mercantile Co-op. Bank vs. CBDT](#) (2010) 45 DTR 377 (Bom) for the proposition that in the matter of condonation of delay, a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities. The test of 'sufficient cause is purely an individualistic test. It is not an objective of test as observed by the Hon'ble Bombay High Court in

the case of Vithhal Dhondiba Chawan vs. Madhav Rao (Bom) Civil Application No.9464 of 2008 judgment dated 06.082009.

8. While considering the bonafides of the delay, an adjudicating authority is expected to bear in mind the principles laid down by Hon'ble Supreme Court in the locus classicus case of Collector of land acquisition vs. Mst. Katiji & Ors. 167 ITR 471 (SC). The Hon'ble Supreme Court laid down the guiding principles for adopting a liberal approach in the matter of condonation of delay. The principles laid down by the Hon'ble Court are reproduced hereunder:

" 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.

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

3. "Every day's delay must be explained" does not mean that pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.

4. When substantial justice and technical considerations 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 a non-deliberate delay

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk.

6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

9. The principles enunciated by the Hon'ble Courts say it all."

10. In the light of facts and circumstances narrated hereinabove, we direct the CIT(A) to condone the delay occurred in filing the appeal before it and admit the appeal for adjudication on merits in accordance with law. Accordingly, the captioned appeal is restored to the file of the CIT(A) for de novo adjudication on merits in accordance with law after giving fair opportunity to the assessee."

5. Further in the case of Solitary Development Pvt. Ltd. Vs. DCIT the Coordinate Bench of the Tribunal in ITA No. 1787/Mum/2019 while condoning the delay of 1081 days the coordinate bench of the Mumbai Tribunal held as under:-

“5. At the outset, we find that the ld. CIT(A) had not adjudicated the issue on merits of the additions. The appeal has been dismissed by the ld. CIT(A) only on the ground of not condoning the delay thereon. It is not in dispute that there was a delay in filing of appeal by the assessee by 1081 days. But we find that assessee has duly explained the circumstances under which a decision was taken for not preferring any appeal. We also find that the Chartered Accountant who advised the assessee has also filed an affidavit confirming the aforesaid facts which is enclosed in page 13 of the paper book. Subsequently, when the penalty and prosecution proceedings were launched on the assessee, the assessee based on an expert advice (second opinion), decided to file an appeal before the ld. CIT(A). This, in our considered opinion, constitute a reasonable cause, as the law is very well settled that mistake of the Counsel in not suggesting the assessee to prefer an appeal should not result in assessee getting fastened with penal damages together with tax and interest liability thereon. Before us, the ld. AR vehemently argued that the assessee had got a good case on merits and that the said disallowance of interest, among others, cannot be made at all in the hands of the assessee company. But we are not inclined to get into the merits of the additions in this appeal as the ld. CIT(A) had not addressed the merits at all. Considering the totality of facts and circumstances, we direct the ld. CIT(A) to condone the delay in filing of the appeal by the assessee, admit the appeal of the assessee for adjudication and adjudicate the issues on merits. Needless to mention that assessee be given reasonable opportunity of being heard. The assessee is also directed to cooperate with the ld. CIT(A) for expeditious disposal of this appeal and not to take any adjournment except due to unavoidable or

exceptional circumstances. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.”

6. In the present case, also the Ld. CIT(A) has dismissed the Appeal on delay in latches. The Assessee has specifically contended before the Ld. CIT(A) that the Assessee was unaware of fact of non filing of the Appeal before the Tribunal on time and Assessee came to the know when the new tax consultant appointed to Review the tax records. When the said fact was confronted to earlier tax consultant, he has confessed to the same that the Appeal was not filed against the assessment order as he was under the bona-fide belief that the intimation of the CIT(A) was not appealable. Thereafter immediately the Assessee filed Appeal on 04/02/2023 along with application for condonation of delay as adverse by the new consultant. The Assessee was claimed to be under the false impression that appeal has been filed, therefore, there was delay in filing the appeal. As observed above, on the similar facts and circumstances, the Coordinate Bench of the Tribunal in the case of a sister concern of the Assessee, condoned the delay in filing the Appeal before the Ld. CIT(A) and remanded the matter to the file of the A.O. for deciding afresh. In view of the above discussion, we condone the delay of 1987 days in filing the Appeal before the Ld. CIT(A) and remand the matter to the file of the Ld. CIT(A) to decide the Appeal on its merit in accordance with law after hearing the Assessee.

7. In the result, the appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 12th November, 2024

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 12/11/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT, NEW DELHI