

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री राकेश मिश्र, लेखा सदस्य के समक्ष
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Rakesh Mishra, Accountant Member]

I.T.A. No. 1550/Kol/2024

Assessment Year: 2017-18

M/s Vintage Breweries Pvt. Ltd. (PAN: AAECV 2870 L)	Vs.	ITO, Ward-6(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	14.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	27.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, FCA
For the Respondent/ राजस्व की ओर से	Shri Pradip Biswas, Addl. CIT Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 22.05.2024 for the AY 2017-18.

2. Brief facts of the case of the assessee are that the assessee filed its return of income on 31.10.2017 for AY 2017-18 declaring total income of Rs. 55,060/-. The case of the assessee was selected for scrutiny to verify low income in comparison to high

loss/advances/investment in shares appearing in the balance sheet. Notices were issued but the assessee company failed to comply with the notices, as a result of which, AO completed the assessment and by making addition of Rs. 74,36,405/- towards income from investment, assess the total income of the assessee at Rs. 74,91,465/-.

3. The said order has been challenged by the assessee before the Ld. CIT(A) wherein also the appeal of the assessee has been dismissed by holding that there is a delay of 314 days in filing the appeal and no sufficient reason have been explained.

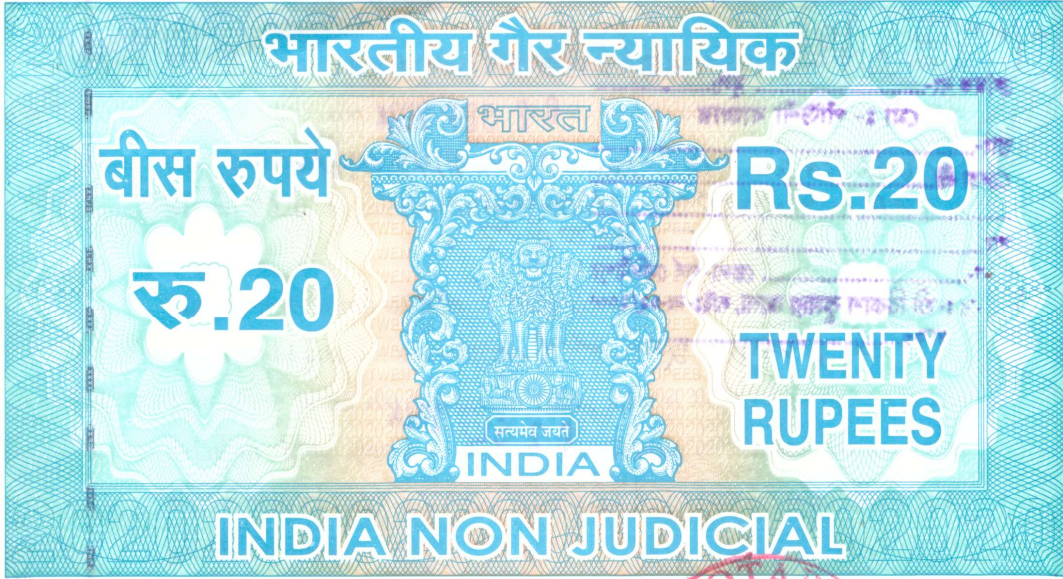
Being aggrieved and dissatisfied the present appeal has been filed by the assessee.

4. The Ld. A.R challenged the impugned order by filing an Affidavit that the appeal of the assessee has been dismissed on account of delay of 314 days but after deducting the period of COVID-19 the delay in fact was of only 85 days. The ld. Counsel further submits that there was a reasonable cause for delay as the wife of assessee was seriously ill during that period. He has also brought documents in support of illness. The prayer of the ld. Counsel for the assessee, is that assessee should have been given an opportunity to place his case before the Ld. CIT(A).

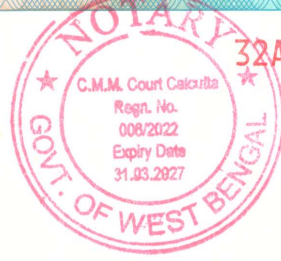
5. The Ld. Sr. D/R supports the impugned order.

6. We have perused the facts of the case and found that before the AO, assessment has been done in absence of the assessee on account of his non-submission of the reply. The Ld. CIT(A) has also dismissed the case of the assessee on account of delay. We have perused the Affidavit filed by the assessee which is as under:

SL. NO 39 2024,



পশ্চিমবঙ্গ পশ্চিম বঙ্গাল WEST BENGAL



AFFIDAVIT

I, Manoj Kumar Mandal, son of Sri Shankar Mandal, aged about 35 years, residing at Sapuipara Birpur, Howrah- 711206, West Bengal bearing PAN AYXPM5282C do hereby solemnly affirm and declare as under:

1. That I am Director of Company Vintage Breweries Pvt Ltd of 29A Weston Street, Room No.B3, 2nd Floor, Kolkata-700012 assessed under PAN AAECV2870L.
2. That I received the assessment order u/s 144 for Asst Year 2017-18 on 21.11.2019.

N. DASGUPTA
 Notary
 Regn. No. 008/2022

VINTAGE BREWERIES PRIVATE LIMITED


3. That the appeal before the CIT(A) for Asst Year 2017-18 could not be filed within the due date as I occupied due to unavoidable circumstances, as my wife was seriously ill from November 2019 to March 2020. In support of the same copy of Doctor Prescription is attached.
4. That in the month of March 2020 covid outbreak spread all over the world and I could not attend my office.
5. That there is 85 days delay in filing appeal before the CIT(A). The delay in filing appeal is due to unavoidable circumstances as stated above, without any intention otherwise and assessee would not have gained anything.
6. That the aforesaid statements are true to the best of my knowledge and belief.


VINTAGE BREWERIES PRIVATE LIMITED

Manoj Kumar Mondal
 Director / Auth. Signatory


Deponent

Date : 6th September, 2024

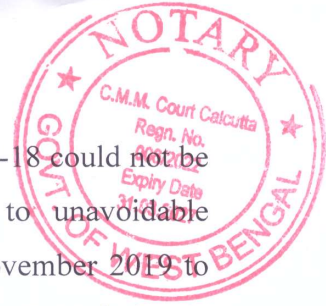
Identified by me

 Advocate
 P. G. Mondal


N. DASGUPTA
 Notary
 Regn. No. 006/2022
 3, Bankshai Street
 Calcutta-700001

**SOLEMNLY AFFIRMED
 &
 Declared Before me
 on Identification Adv.**


**NOTARY
 N. DAS GUPTA
 C.M.M. Court
 Govt. W.B.**

13 NOV 2024



7. In this context, we have perused the several decisions of the Hon'ble Apex Court and find that in *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575], this Court reiterated the following classic statement from *Krishna vs. Chathappan* [1890 ILR 13 Mad 269]:

"... Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

7.1. In *N.Balakrishnan v. M.Krishnamurthy* [1998 (7) SCC 123], this Court held:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice..... Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly."

A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

8. Keeping in view the facts and the reason as stated in the affidavit as well as the view of the Hon'ble Apex Court we are inclined to give an opportunity to the assessee to place his case before the CIT(A). Affidavit of the assessee has explained the delay and according to us it is just and reasonable, accordingly delay is here by condoned. The order of Ld. CIT(A) is hereby set aside. The case of the assessee is hereby restored

in the file of Ld. CIT(A) to dispose of the case after hearing the assessee. The assessee is hereby directed to place all his case before the Ld. CIT(A).

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

Order is pronounced in the open court on 28th November, 2024

Sd/-

Sd/-

(Rakesh Mishra / राकेश मिश्र)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey / प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 28th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Vintage Brewaries Pvt. Ltd., 29A, Weston Street, Room No. 83, 2nd Floor, Kolkata-700012.
2. Respondent – ITO, Ward-6(3), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata