

आयकर अपीलिय अधिकरण  
दिल्ली पीठ "एस एम सी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2698और2697/दिल्ली/2024 (नि.व. 2009-10और 2011-12)  
ITA Nos.2698 & 2697/DEL/2024 (A.Y.2009-10 & 2011-12)

Kapil Stone Crushing Co.  
L-24, Kalka Ji, New Delhi 110019

PAN: AAGFK-1338-R

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-29(1),  
Civic Centre, New Delhi 110019

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Minal Goel, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal , Sr. DR

सुनवाई की तिथि/ Date of hearing : 12/09/2024

घोषणा की तिथि/ Date of pronouncement: : 29/11/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals), Additional/Joint Commissioner of Income Tax (Appeals)-1, Hyderabad (hereinafter referred to as 'the CIT(A)'), for assessment years 2009-10 & 2011-12, respectively. Both the impugned orders are of even date i.e. 26.03.2024. Since these appeals emanate from same set of facts, these appeals are taken up together for adjudication and are decided by this common order.

**ITA No. 2698/Del/2024 for AY 2009-10**

2. Ms. Minal Goel, appearing on behalf of the assessee submitted that the CIT(A) has dismissed appeal of assessee on ground of limitation. She fairly stated

that appeal was filed before the CIT(A) with a delay of 12 Years 11 Months 23 Days. The assessee had filed an application for condonation of delay in filing of appeal citing detailed reasons. She further stated that the delay in filing of appeal was not intentional. The assessee filed its return of income for AY 2009-10 on 29.09.2009. The return of assessee was proceed by Central Processing Centre (CPC) u/s. 143(1) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') vide intimation dated 10.09.2010. On perusal of intimation it was observed that depreciation of Rs.8,33,170/- claimed by the assessee was not allowed by the CPC. The then tax consultant of the assessee Shri Vijay Singh Jasoria advised the assessee that adjustment in the ITR and consequent tax demand are due to incorrect processing of return, while *suo moto* reprocessing of ITR such adjustment will be corrected and resultant demand will be deleted. After the demise of Shri Vijay Singh Jasoria in January 2021, the tax matter of the assessee were handle by Shri Ram Kumar Samarria, Chartered Accountant. During the compliance of tax audit for Financial Year 2022-23 it transpired that outstanding demand of Rs.3,13,310/- for assessment year 2009-10 is reflected in the portal of Department in the name of assessee. Immediately, thereafter, as advised by the tax consultant the assessee filed appeal before the CIT(A). This resulted in delay of more than 12 Years in filing of appeal before the Tribunal. She placed reliance on the decision of Hon'ble Supreme Court of India in the case of *Collector, Land Acquisition vs Mst. Katiji, 167 ITR 471* for condoning delay in filing of appeal.

3. Per contra, Ms. Shivani Bansal representing the department vehemently defending the impugned order and prayed that there has been inordinate delay of almost 13 years in filing of appeal before the CIT(A). No valid reason has been

given by the assessee causing such delay. She prayed for dismissing appeal of the assessee.

4. Both Sides heard, order of the CIT(A) examined. The CIT(A) has dismissed appeal of the assessee on the ground of limitation. The first appeal filed by the assessee is time barred by 12 years 11 months 23 days. The assessee had filed an application for condonation of delay before the CIT(A). The relevant extract of the reason given causing delay is reproduced herein below:

*“During the compliance of tax audit for FY 2022-23, the tax consultant of the Appellant has visited the tab 'Pending Action > Response to Outstanding Demand', wherein it was noticed that outstanding demand of INR 3,13,310 was reflecting in relation to AY under consideration 2009-20. On further, verification, it was observed that this demand is principally incorrect and liable to be deleted, as depreciation reflecting in the profit and loss account was calculated in accordance with the Income Tax law being the Appellant a Partnership Firm, unlike the Companies Act law in the case of the Companies. Therefore, the adjustment of depreciation amount in the total income of the Appellant is incorrect and liable to be deleted. Thus, in order to get deleted the incorrect tax demand and to be free from the reflecting outstanding tax demand, the Appellant has filed an appeal before your Honour.”*

5. It is a trait law that while dealing with the application for condonation of delay, acceptance of explanation furnished should be the rule and refusal an exception. The expression “sufficient cause” should receive a liberal construction so as to advance justice when there is no inaction, negligence or lack of bonafide is imputable to the party. The Hon’ble Apex Court in the case of *N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123*, where there was a delay of 883 days in filing of application for setting aside ex-parte decree; on application for condonation of delay, the trial court found the reasoning given for condoning of delay sufficient and condoned the delay, the matter traveled to the Hon’ble High

Court. The Hon'ble High Court observed that the delay of 883 days in filing of application was not properly explained and the trial court was not justified in condoning the delay. The matter further traveled to the Hon'ble Apex Court. The Hon'ble Court reversed the findings of Hon'ble High Court *inter alia* observing as under:-

*"It is axiomatic that condonation of delay is 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."*

6. Thus, what emerges from the law expounded by Hon'ble High Supreme Court of India with respect to condonation of delay is that expression "sufficient cause" should be given liberal construction so as to advance substantial justice where no negligence, inaction or want of bonafide on the part of party is shown. The duration of delay is not fatal if explanation is satisfactory. In the instant case, the explanation furnished by the assessee fails to show that there was a bonafide reason or there was no negligence on part of the assessee or some action was taken by the assessee for rectification of alleged mistake in the intimation. The assessee was absolutely negligent and had taken no steps to get the alleged mistake rectified in the intimation issued u/s. 143(1) of the Act for AY 2009-10. The assessee kept waiting for more than 12 years for *suo moto* rectification of intimation for AY 2009-10. A bare reading of reasons given by the assessee for

condonation of delay shows absolute callousness and irresponsible conduct of assessee/appellant. Thus, I find no error in the impugned order in rejecting assessee's application for condonation of delay of more than 12 years 11 months 23 days in filing of first appeal. The impugned order is upheld and appeal of the assessee is dismissed.

**ITA No 2697/DEL/2024 for AY 2011-12**

7. Both sides are unanimous in stating that the facts in appeal are identical to the facts in appeal for AY 2009-10 except that the appeal before the CIT(A) was time barred by 11 years 06 months 23 days and amount involved is Rs.2,52,000/-.

8. A perusal of impugned order reveals that appeal filed by the assessee before the CIT(A) was time barred 11 years 06 months 23 days. The reasoning given by the assessee for condonation of delay is identical to the one given in AY 2009-10. Since, appeal of the assessee for AY 2009-10 has been dismissed on identical set of facts, the present appeal of the assessee is also dismissed for parity of reasons.

**9. In the result, appeal of the assessee for AY 2009-10 & 2011-12 are dismissed.**

Order pronounced in the open court on Friday the 29<sup>th</sup> day of November, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 29/11/2024

NV/-

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI