

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" , HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, HON'BLE ACCOUNTANT MEMBER**

ITA No.752 & 770/Hyd/2024		
Assessment Year : 2011-12		
PCH Life Style Limited Hyderabad [PAN : AAFCP1774N]	Vs.	DCIT Circle-5(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri Raj Kumar Gupta, AR	
Revenue by:	Ms. Kavitha Rani, DR	
Date of hearing:		
05.12.2024		
Date of pronouncement:		
09.12.2024		

ORDER

PER LALIET KUMAR, J.M.

These appeals are filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals) [Ld.CIT(A)], National Faceless Appeal Centre, Delhi dated 13.06.2024 for the AY 2011-12. Since the grounds raised in these appeals are identical in nature, these appeals are clubbed, heard together and are being disposed of by this consolidated order. The

assessee has raised the following grounds in ITA No.752/Hyd/2024 :

1. *The order of appeal passed by the Ld.CIT(A) u/s 250 of the Act dt.13.06.2024 is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.*
2. *The Ld.CIT(A) erred in dismissing the appeal and not condoning the delay of 44 days in filing the appeal before him, without appreciating that the appellant has reasonable and sufficient cause for such delay in filing the appeal.*
3. *The Ld.CIT(A) ought to have admitted and heard the appeal on the basis of merits rather than dismissing the appeal without appreciating that the delay is due to reasons that are beyond the control of the appellant.*
4. *The Ld.CIT(A) has erred in rejecting the appeal on the technical reason of delay in filing which amounts to denial of justice to the appellant.*
5. *Appellant may, add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.*

2. It is pointed out by the Ld.AR, that the Ld.CIT(A), while deciding the appeal has not condoned the delay in filing the appeal. The reasons recorded by the Ld.CIT(A) in the appellate order at para No.6.1. are as under :

“6.1. The appellant has filed appeal after 44 days. The appellant in his condonation request has submitted that as the penalty order dt 28.06.2019 was misplaced, they could not file appeal within the stipulated time. The request for condonation cannot be accepted as the appellant’s reasons for condonation

are not found to be reasonable. In this regard reliance is placed on the decision of the Hon'ble Mumbai High Court in the case of Vama Apparels India (P) Ltd vs ACIT [2019] 102 taxmann.com 398 (Bombay) wherein it was held that "Where assessee filed appeal before High Court with a delay of 507 days and sought condonation of delay stating that ex-employee of assessee who received order of Tribunal put it in his drawer and left company without informing anybody about such orders and it was only about a month before filing of instant appeal when his substitute new employee found papers from drawer, there was no sufficient explanation for delay." The relevant part of the decision is as under:

7. Having heard the learned counsel for the applicant and having perused the documents on record, we do not find that the applicant has appropriately explained the delay which is of 507 days. We are not insisting on the applicant explaining each day of delay. Nevertheless when the delay is substantial, at least a proper explanation for the bulk of the period should be necessary. In the present case, principally, the explanation of the applicant, as noted above is that the ex-employee who received the order of the Tribunal put it in his drawer and left the company without intimating anybody. It was only about a month before filing of the appeal when his substitute new employee found the papers from the drawer.

8. For multiple reasons, this explanation does not inspire confidence. We had inquired with the learned counsel for the applicant why the ex-employee had not filed affidavit. It was stated that he was a part time employee and now having left the service was not traceable. It is intriguing that the applicant - company had entrusted such an important task of receiving Court's order to a part-time employee whose whereabouts within short time of his leaving the service are not be available with the company. Further, there are inconsistencies in the declaration made by and on behalf of the applicant. In the present Motion, Mrs. Jaya Patel, the director of the company states that she came to know about the Tribunal's order on 30.5.2018. It is also stated, as noted earlier, that the new employee Mr. Naidu was the first

one to tumble upon the order lying in the drawer of the previous employee. The applicant has filed affidavit of said Mr. Naidu who states that he had found the order of the Tribunal on 8.8.2018 and showed the same to Mrs. Jaya Patel who was surprised to see it as she was not shown the same earlier.”

The facts of the case mentioned supra are very much similar to the facts of the instant case on hand. It is mentioned by Shri Balvinder Singh Director of the company that he is acquainted with the facts of the case and that the penalty order was received on 28.06.2019. The appellant even after receiving the penalty order has misplaced the papers and has not bothered to obtain a copy of the order from the Assessing Officer and has filed appeal only after 74 days of receiving the order, which seems to be very improbable and far from reality. Further, it was also seen from the appeal filed by the appellant against the assessment order dated 14/12/2018, has been filed belatedly by 240 days. In the appeal filed against assessment order, the appellant has attributed the reason for delay in filing appeal to misplacement of order. It is pertinent to mention that, in both the appeals filed, the appellant has attributed the reason for delay in filing to misplacement of order only. It is apparent from the records that the both assessment order and penalty order received on different dates apart by 196 days. Further, it is observed that the appellant has filed the appeals against above said orders on same date. As such, it appears to be reasons furnished by the appellant are not genuine and hence the same cannot be considered. In view of this, the request for condonation of delay in filing the appeal cannot be accepted as the cause furnished by the appellant for delay in filing appeal is not reasonable.”

3. It is the contention of the assessee that the Ld.CIT(A) was not convinced with the reasoning given by the assessee and as such, he has dismissed the appeal of the assessee, without deciding the issue on merits. The Ld.AR submitted that the delay in filing the appeal before the Ld.CIT(A) may kindly be

condoned and direction may kindly be issued to the Ld.CIT(A) to decide the issue on merits.

4. Per contra, the Ld.DR had submitted that the assessee was casual and callous in presenting appeal before the Ld.CIT(A), which is clear in the para 6.1 of the order of the Ld.CIT(A) (supra). He, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeals filed by the assessee.

5. We have heard the rival contentions and perused the material available on record. The plea given by the assessee was that the original order has been misplaced and was not traceable to file appeal in time. We find that even a certified copy of the order has not been enclosed by the assessee along with the appeal proceedings before the Ld.CIT(A). The appellant is required to be diligent and more particularly when the appellant happens to be a company, governed by company laws and when the professionals are indulged in the affairs of the assessee company. In the light of the above, we deem it appropriate to remit the matter back to the file of the Ld.CIT(A) with a direction to condone the delay subject to cost of

Rs.10,000/- in each matter in favour of Prime Minister National Relief Fund, to be deposited within a period of one month from the date of passing of this order. On depositing the cost to the Prime Minister National Relief Fund, the Ld.CIT(A) shall decide the matter afresh after affording an opportunity of hearing to the assessee. Needless to say, the assessee shall be at liberty to file documents, if any, as deemed appropriate to prove its case. On filing the documents, the Ld.CIT(A) may call for the remand report from the Assessing Officer and decide the matter in accordance with law.

6. In the result appeal of the assessee is allowed for statistical purpose.

7. Since the facts in ITA No.770/Hyd/2024 for the A.Y.2011-12 are similar to ITA No.752/Hyd/2024, following the similar reasoning vide para 5 above, we allow the appeal filed by the assessee in ITA 770/Hyd/2024, *mutatis mutandis*.

8. In the result, both the appeals of the assessee for the A.Y.2011-12 are allowed.

Order pronounced in the open court on 9th December, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 09.12.2024.

L.Rama, SPS

Copy to:

S.No	Addresses
1	M/s PCH Life Style Limited, P. Murali & Co, Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad
2	The DCIT, Circle-5(1), Hyderabad
3	The Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order