

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.333/Lkw/2024
A.Y. : B.P. 1996-97 to 2002-03

M/s Benara Bearings Pvt. Ltd., 44/347, Bharatpur Road, Bodla, Agra-282007 U.P.	vs.	Deputy Commissioner of Income- tax, Central Circle-1, Kanpur
PAN:AACB5525F		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashish Jaiswal, Advcoate
Revenue by:	Sh. Gayasuddin, CIT DR
Date of hearing:	05.09.2024
Date of pronouncement:	25.10.2024

ORDER

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal against the order of the Id. CIT(A), NFAC, passed under section 250 of the Income Tax Act, 1961 on 21.09.2023. The grounds of appeal preferred are as under:-

“1. That the Id. CIT(A) has erred in dismissing the appeal without considering the reason for delay beyond control of the appellant.

2. That the Id. CIT(A) has erred in not considering the reason for delay that the appeal is filed delayed for the reason that there are two entity with the similar names as Benara Bearing (P) Ltd and Benara Bearing & Piston Pvt Ltd, whereas the appeal was filed within time of 30 days in the case of Benara Bearing & Piston Pvt Ltd instead of the appellant which was subsequently withdrawn vide CIT(A) order dated 21.03.2018 and accordingly the appeal for the appellant was filed.

3. That the Id. CIT(A) erred in not providing proper and adequate opportunity to the appellant in the interest of natural justice.

4. *That the order passed by the Id. CIT(A) is arbitrary and prejudice deserve to be set-aside in the interest of justice.*
5. *That the Id.AO has erred in making addition/ disallowance beyond the order passed u/s 263 of the IT Act, 1961 by the Id. CIT, Central.*
6. *That the Id.AO has passed order u/s 158BC rws 263 on the issue which were already examined by the earlier AO order u/s 158BC of the Act.*
7. *That the Id.AO has erred in making addition/ disallowance under the block assessment which were already part of the record and no evidence or material was found during search as required u/s 158BB.*
8. *That the Id. CIT Central as well as Id.AO erred in making addition on account of unexplained cash credit of Rs.20,00,000/-.*
9. *That the Id.AO has erred in making addition on account of undisclosed transaction of Rs. 4,08,21,897/-.*
10. *That the Id.AO has erred in making addition on account of unexplained investment of Rs.53,44,000/-.*
11. *That the Id.AO has erred in making addition on account of unexplained cash of Rs.7,00,000/-.*
12. *That the Id.AO has erred in making arbitrary and unlawful additions with prejudice and predetermined mind without application of mind.*
13. *That the Id.AO has erred in making addition without proper and adequate opportunity and application of mind.*
14. *That the appellant craves leave to introduce, modify or withdraw any ground of appeal with your honours kind permission."*

2. The facts of the case are that the search and seizure operation under section 132 of the I.T. Act, 1961 was conducted at the business premises of the assessee company on 20.03.2002. Proceedings for the assessment of the assessee's income for the block period ending 20.03.2002, were initiated by issue of notice under section 158BC of the I.T. Act, 1961. In response, the assessee filed a return of income showing undisclosed income of Rs. 22,00,000/-. Assessment under section 158BC was completed on 29.03.2004, at the total undisclosed income of Rs.22,00,000/-. Thereafter, the Id. CIT(Central), Kanpur passed an order under section 263 on

8.03.2006 and set aside the block assessment order, on the issue of verification of three cash credits in the names of M/s Meenakshi Construction, Shri Mahesh Chandra Agarwal and Shri K. Anil Kumar Agarwal. Thereafter, in compliance to the order under section 263, the Id. AO issued notices under section 143(2) and 142(1) asking the assessee to prove the cash credit in respect of the aforesaid three parties. In response, it was submitted that the assessee had filed a petition under section 245C(i) of the I.T. Act before the Hon'ble Settlement Commissioner, New Delhi on 22.12.2006, in which the assessee had disclosed additional undisclosed income of Rs. 2,00,000/-. A Rule 9 report was sent to the Hon'ble Settlement Commission, stating the view of the Department regarding the total undisclosed income of the assessee company, which was quantified as under:-

“(i) Undisclosed income as 22,00,000/- declared as per return of income- Rs.22,00,000/-.

(ii) Unexplained and unproved cash credit of Rs. 20,00,000/- in the names of M/s Meenakshi Construction, Shri Mahesh Chandra Agarwal & Shri K. Anil Kumar Agarwal respectively.

(iii) Undisclosed loose papers as per Annexure-C of Rs. 4,08,21,897/- (iv) Unexplained investment in land as per Annexure D-1 & D-2 as discussed above of Rs. 53,44,000/-.

(v) Unexplained cash not explained of Rs. 7,00,000/-.”

3. However, after the filing of the Rule 9 report, since the assessee did not file any counter reply, the Hon'ble Settlement Commission allowed the proceedings to abate and the matter reverted back to the file of the Id. AO. Thereafter, the Id. AO conducted the assessment proceedings and, after obtaining a reply from the assessee on all the aforementioned issues, rejected the submissions that the transactions regarding cash credit were outside the purview of block assessment, in view of the amendment in the definition of, “undisclosed income” as given in section 158B(b) of the Act made by Finance Act, 2002 with retrospective effect from 1.07.1995. He also placed reliance on the decision of the Hon'ble Rajasthan High

Court in the case of **CIT vs. Ajay Kumar Sharma** 259 ITR 240, which held that once the tax credit were not taxed in the relevant assessment years, then they could be treated as undisclosed income and can be taxed after search in the block period. Thereafter, the ld. AO also rejected the submissions of the assessee on merits , holding that the assessee had failed to prove the identity of the creditors, their creditworthiness and the genuineness of the transaction. He, therefore, added back unexplained cash credit of Rs.20,00,000/- received from the three parties to the income of the assessee. He also made additions of Rs.4,08,21,897/- on account of transactions recorded on a bunch of loose slips / papers marked as Annexure-C, which were seized from the premises of Heera Lal Jain on the grounds that these papers belonged to the company in which Shri Heera Lal Jain was a Director. The ld. AO also made an addition of Rs.53,44,000/-, on account of investments as per Annexure D-1 and D-2 which were papers found from the possession of Shri Heera Lal Jain and finally, an addition of Rs. 7,00,000/- was made on account of unexplained cash found from the possession of Shri Heera Lal Jain. Thus, the total undisclosed income of the assessee was determined at Rs.5,10,65,897/- and the same was brought to tax @ 60%, with a surcharge of 2%. Penalty notice under section 158BFA(2) were also issued.

4. Aggrieved with this block assessment that was concluded on 3.11.2016, the assessee filed an appeal with NFAC on 5.02.2018. The delay of 429 days in filing the appeal was sought to be explained by submitting that earlier the assessee had inadvertently filed an appeal in the name of Benara Bearing and Piston Ltd., instead of Benara Bearing Pvt. Ltd., because of similarity of the name of the assessee. However, the ld. CIT(A) held that when an appeal was filed beyond statutory period, the assessee needed to provide a valid reason or demonstrate exceptional circumstances for the delay. He held that the assessee had filed nothing concrete by way of evidence to demonstrate the above stand and not shown anything from the record, that efforts were made for filing the appeal on time. Therefore, in his view ,

since the assessee had not demonstrated any sufficient cause for not presenting the appeal within a period of 30 days. He declined to admit the appeal after quoting from various case laws to justify his decision.

5. The assessee is aggrieved at this summary dismissal of his appeal and has filed this appeal before us. At the very outset, it is observed that this appeal too is delayed by 177 days. An application for condonation of delay was filed accompanied by an affidavit in which it was submitted that the order of the Id. CIT(A) was passed by the NFAC without considering the written submission and paper book filed on 5.12.2022 and the order was uploaded on the income tax portal. The assessee was unaware of this order being passed and therefore, could not file the appeal on time and, it was only when the assessee ascertained that the order had been passed, that he filed an appeal. The notice and compliance acknowledgment was attached to this condonation petition and it was prayed that the delay may kindly be condoned and the assessee may be allowed the opportunity to contend the case, in the interest of justice. After consideration of the petition, in the interest of justice, we admit the appeal for hearing.

6. Shri Ashish Jaiswal, Advocate (hereinafter referred to as the "Id. AR") appeared on behalf of the assessee and submitted before us, that the delay in filing the appeal before the Id. CIT(A) was solely on account of the fact that, by mistake, the assessee had filed an appeal against the block assessment order dated 3.11.2016 in the name of M/s Benara Bearings and Pistons Limited before the Id. CIT(A)-4, Kanpur, vide Acknowledgment No.560818481141216 on 14.12.2016 instead of filing it under the name and PAN number of the assessee company. It was only later that assessee realized that the appeal had been filed in the wrong name and therefore, on 5.02.2018, it moved a petition before the Id. CIT(A)-4, Kanpur for withdrawing the appeal, so inadvertently filed. A copy of the order of the Id. CIT(A)-4, Kanpur dated 21.03.2018, where these facts are outlined was filed before us, by

way of proof. It is observed that the ld. CIT(A) agreed that the same was an infructuous appeal, which had inadvertently been filed by the appellant and on 5.02.2018 i.e. on the same date as it filed the petition for withdrawal, it had filed a separate appeal in the name of Benara Bearings Pvt. Ltd., against the order under section 158BC r.w.s. 263 passed by the DCIT, Central, Circle-1, Kanpur on 3.11.2016. Therefore, the ld. CIT(A)-4-Kanpur allowed the earlier appeal to be withdrawn and dismissed it as infructuous. The ld. AR submitted before us, that it was solely on account of this misconception and the similarity of names between the two companies, that the delay was occasioned in filing the appeal in the case of Benara Bearings Pvt. Ltd., and there was no mala fide or negligence on the part of the assessee, which would warrant the summary disposal of the appeal by the ld. CIT(A). It was, therefore, prayed that matter may either be restored to the file of the ld. CIT(A), NFAC for a decision on merits or, in the alternate, the case of the assessee may be considered on merits by the Tribunal itself. On the other hand, Shri Gaysuddin, ld. CIT DR (hereinafter referred to as the "ld. DR" submitted that since the ld. CIT(A) had not examined the issued on merits, it would be appropriate to restore the matter to him for examination on merits rather than for the Tribunal to consider the issues, in the first instance.

7. We have duly considered the submissions made by both parties. We find that the delay in filing the appeal before the ld. CIT(A), NFAC, was occasioned by the clerical error of filing the appeal in the name of M/s Benara Bearings and Pistons Limited on account of the similarity in the names of the two companies. It is clear cut case of oversight and it demonstrates that there was no intention of the assessee to either accept the order of the ld. AO or to show laxity in filing the appeal within the permitted time period. It was only due to the fact that the assessee was under the impression that the appeal had already been filed, without being aware of the lacuna in the same, that occasioned the delay in the filing of the appeal before the ld. CIT(A), NFAC. We, therefore, feel that the assessee has demonstrated, "sufficient

cause” to explain the delay in the filing of the appeal and the ld. CIT(A) ought to have considered the probability that human error can sometimes be a sufficient cause to explain delay. It is clear that the assessee did not stand to gain in any way by delaying the appeal and the facts brought on record by the assessee should have been objectively considered by the ld. CIT(A) before refusing to condone the delay. In considering how applications for condonation of delay should be handled, the Hon’ble Supreme Court in the case of **Collector Land Acquisition, Anantnag vs. Mst. Katiji & Ors** (1987) 2 SCC 107 has held that, *“The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that*

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.
3. The requirement that, "Every day's delay must be explained" does not mean that a 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 pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, 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 a serious risk.
6. 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.”

8. In view of the above, we, therefore, deem it fit to restore the matter back to the file of the ld. CIT(A), NFAC with a direction to condone the delay and decide the issues raised before him on their merits after giving the assessee due opportunity of being heard. Ground Nos. 1 to 4 of the assessee's appeal are accordingly allowed. As the matter has been restored to the file of the ld. CIT(A) for a decision on the merits of the case, ground nos. 5 to 13 are infructuous and dismissed as such. Ground no. 14 is general in nature and does not require adjudication.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 25.10.2024 at Allahabad, U.P.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:25/10/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

Sd/-

[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

By order
Sr. P.S.