

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता

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

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. Nos. 458 & 459/Kol/2024

Assessment Year: 2013-14

Sankar Ghosh (PAN: AJXPG 9544 A)	Vs.	ITO, Ward-50(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	09.12.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	19.12.2024
For the assessee / निर्धारिती की ओर से	Shri Miraj D Shah, A. R
For the revenue / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT, Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

These are the two appeals preferred by the assessee against the order passed u/s 147/144 dated 28-03-22 by the A.O conformed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 28.01.2024 for the AY 2013-14 and order passed u/s 271(1)(C) dated 26-09-22 by the A.O. confirmed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 28.01.2024 for the AY 2013-14 .

Issues are common in both appeals as CIT(A) dismissed the case of the assessee in both proceedings on the ground of delay.

2. Brief facts of the case of the assessee are that the assessee filed its return of income at Rs. 1,95,620/- for the AY 2013-14. The case of the assessee was reopened by issuing notice u/s 148 on the basis of information received from the Investigation Wing. The assessee did not comply with the notice issued by the AO as a result of which the AO added an amount of Rs. 18,76,860/- as unexplained credit u/s 68 of the Act and penalty proceedings have also been initiated separately.

3. The said order has been challenged by the assessee before the Ld. CIT(A) by filing two appeals wherein both the appeals of the assessee have been dismissed on account of inordinate delay of 277 days and 96 days respectively.

Being aggrieved and dissatisfied the assessee preferred the instant two appeals.

4. The Ld. Counsel instead of entering into merit of the case in both appeals has only submitted that the Ld. CIT(A) did wrong in not condoning the delay though the assessee has filed a condonation petition with sufficient reasons. The Ld. Counsel for the assessee has drawn attention to the Tribunal regarding his condonation petition and submitted that the assessee has to be given one opportunity to place his case before the Ld. CIT(A).

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

6. We have perused the case before the Ld. CIT(A) and find that the Ld. CIT(A) has dismissed the case of the assessee only on account of delay. The condonation petition filed by the assessee in both appeals before the Ld. CIT(A) are as follows.

In a penalty appeal

“ Respected Sir,

Kindly refer to the appeal hereby filed. I submit as under:

- 1) *In this case penalty order imposing penalty of Rs. 5,79,950/- u/s 271(1)(c) was passed on 26.09.2022.*
- 2) *The due date to file the appeal against said order was 25.10.2022.*
- 3) *However due to multiple health problem of self as well as of an elderly family member, it could join duties from 15.01.2023.*
- 4) *Thereafter, I consulted my CA, who prepared, drafted the appeal.*
- 5) *Cumulatively, all these factors delays the filing of appeal by 96 days which I pray your goodself to kindly condone.*
- 6) *Kindly condone the delay in filing the appeal and oblige.”*

In a 144/147 appeal

“ Respected Sir,

Kindly refer to the appeal hereby filed. I submit as under:

- 1) *In this case assessment was completed ex-parte u/s 144 on 28.03.2022.*
- 2) *The due date to file the appeal against said order was 27.04.2022.*
- 3) *However I have fallen seriously ill and have developed multiple problems along with illness of an elderly member of the family.*
- 4) *I started attending normal duties on an from 15.01.2023.*
- 5) *Afterwards, it took time to consult the CA in the matter, who drafted the statement of facts and grounds of appeal.*
- 6) *Cumulatively, these happenings caused the delay of 278 days in submitting / filing the appeal.*
- 7) *I pray your honour to kindly condone the delay in filing the appeal and oblige.”*

7. In this context we have gone through the judgment of the Hon’ble Supreme Court which is as under:

“5. 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.”

- 5.1. *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 of the condonation petition as well as Apex Court decision, we are inclined to give an opportunity to the assessee to place his case before the Ld. CIT(A). Accordingly, delay is hereby condoned. The Ld. CIT(A) is directed to hear the assessee and passed afresh order. The order of Ld. CIT(A) in both proceedings are set aside

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 19th December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 19th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sankar Ghosh, C/o, Gour Chandra Ghosh, Khantura, North 24 Parganas, West Bengal-743273
2. Respondent – ITO, Ward-50(1), 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