

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

BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

I.T.A. No.102/Lkw/2024
Assessment Year:2016-17

Krisi Utpadan Mandi Samiti, Rura, Rura, Kanpur Dehat. PAN:AAAAK5660K (Appellant)	Vs.	Income Tax Officer (Exemptions), Kanpur. (Respondent)
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Appellant by	Ms. Sweta Mittal, C.A.
Respondent by	Shri Sunil Kumar Rajwanshi, Addl. CIT (D.R.)

ORDER

(A) In this case assessee's appeal against intimation dated 23/01/2018 issued u/s 143(1) of the I. T. Act was dismissed by learned CIT(A) vide impugned appellate order dated 11/01/2024 [(DIN & Order No.ITBA/APL/S/250/2023-24/1059630235(1)] on the ground that the assessee's appeal was barred by limitation. Relevant portion of the aforesaid order dated 11/01/2024 of learned CIT(A) is reproduced as under:

"5.1 The facts of the case and the grounds raised by the appellant in this appeal have been considered carefully. There is inordinate delay in the filing of appeal for which no sufficient reason has been given by the appellant. The appellant has failed to justify the inordinate delay in filing appeal. From the factual position which emerges it appears that a conscious and considered decision was taken by the assessee

at the relevant point of time for not filing of appeal against the impugned order. It is well-settled law that a distinction must be made between a case where the delay is inordinate and where the delay is of few days only. The inordinate delay in the instant case clearly demonstrates that this appeal was not prosecuted with due care.

On the issue of a routine delay and an inordinate delay, the Hon'ble Supreme Court in the case of Vedabhai alias Vijayantabai Baburao Patil vs. Shantaram Baburao Patil [2002] reported in 122 Taxman 114, has made a distinction between delays that are trivial and cases where inordinately large delays had occurred. The Hon'ble Supreme Court further held that the cases of trivial delays have to be liberally considered, however the cases of inordinate delays have to be approached cautiously. The relevant portion of the order of the Hon'ble Supreme Court is reproduced as under:

"In exercising discretion, under section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case, the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard."

In view of the above detailed discussion, it is held that the appellant has no "sufficient cause" in terms of section 249(3) of the Income-tax Act, 1961 for not presenting the appeal within the prescribed time period/ limit. It is well-settled law that an appellant is not entitled to the condonation as a matter of right. For an appellant to succeed, the existence of sufficient cause is sine qua non and a condition precedent. It is manifestly evident that this ingredient is woefully lacking in this belated appeal filed by the appellant. Thus, the delay in filing the appeal by the appellant is not considered as sufficient cause and the delay is, therefore, not condoned. Accordingly, the present appeal is not found fit for condonation and the same is dismissed without making any discussion/ adjudication on merits or on any other aspect.

Considering the above discussion and facts of this case, the appeal filed is not in conformity with the provisions of Sec 249(2) of

the Act, and there is no sufficient cause for condonation of the delay in filing of the appeal, the present appeal is dismissed as not maintainable."

(A.1) In the aforesaid appellate order, the learned CIT(A) observed that the appellant had not made any submissions for justifying substantial delay in filing of the appeal. The relevant discussion is at paragraphs 4 to 4.6 of the aforesaid order of learned CIT(A), which is being reproduced below for ready reference:

"4. The facts of the case, in brief, are that the appellant e-filed return of income for the Assessment Year 2016-17 on 27-09-2016, declaring total income of Rs. Nil, which was processed u/s. 143(1) of the Act on 25-03-2015. In the intimation issued u/s. 143(1), the DDIT/ADIT-CPC enhanced the appellant's total income from Rs. Nil to Rs. 6,95,353/- by making total disallowance/addition/ adjustments of Rs. 6,95,353/- made on account of denial of exemption claimed u/s 11 of the Act of Rs. 6,95,353/-. Aggrieved, the appellant has filed the present appeal.

4.1 As per Form-35, it is stated by the appellant that the intimation u/s 143(1) of the Act was passed on 23-01-2018, whereas the appeal was filed on 13-07-2019, which is beyond the statutory time limit provided for filing of the appeal. As per section 249(2)(c) the appeal shall be presented within 30 days of the following date on which the intimation of the order sought to be appealed against is served. However, the appellant filed appeal beyond the time limit with delay of more than 1 year 4 months.

*4.2. For the sake of clarity relevant provisions of **Section 249** of the Income-tax Act, 1961 in respect of appeal to the CJT(A) and limitation, are reproduced here under:*

" 249. Form of appeal and limitation :

(1) Every appeal under this Chapter shall be in the prescribed form and shall be verified in the prescribed manner and shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relation thereto be accompanied by a fee of -

(i) Where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates in one hundred thousand rupees or less, two hundred My rupees.

(ii) where the total income of the assessee, computed as aforesaid, in the case to which the appeal related is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees.

(iii) where the total income of the assessee, computed as aforesaid, in the case to which appeal relates is more than two hundred thousand rupees, one thousand rupees.

(iv) where the subject matter of an appeal is not covered under clauses (i),(ii) and (Hi), two hundred fifty rupees.

*(2) The appeal shall be presented **within thirty days of the following date**, that is to say-*

(a) where the appeal is under section 248, the date of payment of the tax, or

(b) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty.

***Provided** that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded, or*

(c) in any other case, the date on which intimation of the order sought to be appealed against is served.

(2A) Notwithstanding anything contained in sub-section(2), where an order has been made under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 and the assessee in default has not presented any appeal within the time specified in that sub-section, he may present such appeal before the 1st day of July, 2000.

(3) The Commissioner (Appeals) may admit an appeal after expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,-

(a) Where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:

***Provided** that, in a case failing under clauses (b) and] on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clauses."*

4.3 In the instant case, the appellant filed the appeal against the order/intimation passed u/s 143(1) of the Act dated 23-01-2018 on 13-07-2019. The appeal was required to be filed within the prescribed time limit of 30 days from the date of receipt of the Demand Notice/ order i.e. upto 23-02-2018. However, the appeal was belatedly filed on 13-07-2019.

*4.4. In the case of **Senior Bhosale Estate (HUF) V/s Assistant Commissioner of Income Tax, the Hon'ble Apex Court** allowed the condonation of delay in filing the concerned appeal pronouncing the principles behind condoning the delay in filing appeals before the Courts by applying section 5 of the Limitation Act, 1963. The Hon'ble Apex Court is of the view that the law of limitation is founded on public policy. The idea behind the law of limitation is not destroy the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The objection of the law of limitation is to keep alive the legal remedy with in a prescribed limited time but does not restrict court to condone the delay in the interests of justice. There are certain genuine ground which courts may consider for the condonation of delay in cases where Appeals are filed after the expiry of period as laid down under the limitation Act, 1963. In the case of condonation of delay where the appeal was filed beyond the limitation of period, the courts are empowered to condone*

the delay, provided that the Appellant can prove his claim of inability to file the appeal within the prescribed period. Litigant must be able to demonstrate that there was "Sufficient Cause" which obstructs his action to file appeal in the prescribed the limit. Courts have also held that the expression "Sufficient Cause" shall receive liberal consideration for the sake of justice. Thus, the condonation of delay is not automatic but it based upon on the facts of the case. Courts while condoning delays in filing appeals have power to examine the case and after ascertain the facts if delay was due to "Sufficient Cause" may condone the delay.

4.5 *Further, the provisions of Section 249(3) lay down that an appeal may be admitted after the expiration of the said period, if the CIT(A) is satisfied that the appellant had sufficient cause for not presenting the appeal within that period. In this case the appellant should have filed the appeal against order u/s 143(1) by 25-03-2015 within 30 days of receipt of order under reference.*

4.6 *The appellant has not made any submissions for justifying the substantial delay in filing of the present appeal.*

In response to the query asked in Column No. 14 of the Form 35 Whether there is delay in filing appeal ?, the appellant has stated : NO. Further, Column No. 15 of the Form 35 asking "If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words), has been left blank by the appellant. Thus, the appellant has not stated any reasons/ circumstances or explanation in support of the the present appeal being filed as a belated appeal nor has explained any relevant facts or circumstances to explain the inordinate delay in filing this appeal.

During the appellate proceedings hearing notices/letters were issued through ITBA/ e-proceedings on 25/08/2020, 23/12/2020, 05/02/2021, 03/06/2021, 15/07/2021, 29/07/2021, 13/02/2023 and 19/07/2023. The appellant made partial compliance on 04/09/2020, 16/02/2021, 02/08/2021 and 20/02/2023 without proper justification of the reasons for filing of belated appeal. During the present proceedings, the notices were issued on 26-09-2023 and 28-12-2023 requiring compliance on or before 05/10/2023 and 08/01/2024 respectively. The said notices were duly served through the e-mail available with ITBA. However, the appellant has failed to make any compliance/ submit any response/ clarification with relevant evidences

with respect to the substantial delay caused in filing of present appeal.”

(B) Aggrieved, the assessee has filed the present appeal in Income Tax Appellate Tribunal. In the course of appellate proceedings in Income Tax Appellate Tribunal, a paper book containing acknowledgement of filing application before learned CIT(A) through e-filing portal on 02/08/2021, requesting for condonation of delay in filing of the appeal, was enclosed along with the copy of order of coordinate Bench of ITAT, Lucknow in the case of Krishi Utpadan Mandi Samiti, Puranpur

(B.1) At the time of hearing, the learned A.R. for the assessee submitted that the learned CIT(A) had erroneously observed that the appellant had not made any submissions for justifying the delay in filing of the appeal in the office of the learned CIT(A). In this regard, she drew attention to paper book which has already been referred to in foregoing paragraph No. (B) of this order. She also submitted that in similar facts and circumstances, in the case of Krishi Utpadan Mandi Samiti, Puranpur in I.T.A. No.147/Lkw/2019, coordinate Bench of ITAT, Lucknow had directed the learned CIT(A) to condone the delay in filing of appeal and further directed the learned CIT(A) to adjudicate the appeal in merits after affording reasonable opportunity of hearing to the assessee. In view of the foregoing, the learned A.R. for the assessee submitted that in the present case also, the learned CIT(A) should be directed to condone the delay in filing of appeal and to decide the assessee's appeal on merits. The learned Departmental Representative for Revenue relied on the impugned order of learned CIT(A).

(C) After hearing both sides, and on perusal of records, it is found that the assessee's application, filed before the learned CIT(A) through e-filing portal on 02/08/2021, requesting for condonation of delay in filing of the

appeal, escaped the attention and notice of learned CIT(A), as a result of which he erroneously observed that the appellant had not made any submission for justifying the delay in filing of the appeal. In view of the foregoing, the impugned appellate order dated 11/01/2024 of the learned CIT(A) is set aside and he is directed to decide the assessee's appeal after due consideration of assessee's application seeking condonation of delay in filing of the appeal in the office of the learned CIT(A). In case the learned CIT(A) deems it fit to condone the delay in filing of the appeal, he is further directed to decide the assessee's appeal on merits. Accordingly, the learned CIT(A) is directed to pass de novo order in accordance with law after affording reasonable opportunity of being heard to the assessee.

(D) In the result, the appeal of the assessee is partly allowed for statistical purposes.

(Order pronounced in the open court on 26/12/2024)

Sd/
(ANADEE NATH MISSHRA)
Accountant Member

Dated:26/12/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT

4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar