

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1962/Bang/2024
Assessment year : 2021-22

M/s. Saviynt India Pvt. Ltd., Smart Work Vaishnavi Tech Park, 1 st Floor, North Tower, Sy. No.16/1, Bellandur Gate, Sarjapura Main Road, Ambalipur, HSR Layout S.O., Bangalore South Bangalore – 560 102. PAN: ABACS 0368R	Vs.	The Deputy Commissioner of Income Tax, Circle 6(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sumit Khurana, CA
Respondent by	:	Shri Amrit Raj Singh, Addl. CIT(DR), (ITAT), Bengaluru.

Date of hearing	:	27.12.2024
Date of Pronouncement	:	30.12.2024

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Saviynt India Private Limited [the Assessee/ Appellant] for assessment year 2021– 2 against the appellate order passed by The Additional/Joint Commissioner of Income Tax (A)– 1, Vadodara [the Ld. CIT(A) dated 13/8/2024 wherein the appeal filed by the assessee against the assessment order passed under

section 143 (1) of The Income tax Act , 1961 [The Act] dated 13/11/2022 passed by The Central Processing Centre, Bangalore (The Learned AO) was dismissed for the reason that the appeal filed by the assessee is delayed by 38 days and the learned CIT – A found that it is not for the sufficient reasons.

2. Aggrieved by the appellate order assessee is in appeal before us raising following grounds: –

- “ 1. On the facts and circumstances of the case and in law, the order passed under section 250 of the Income-tax Act, 1961 (the Act) dated August 13, 2024, by the Additional / Joint Commissioner of Income Tax (Appeals)-1, Vadodara [ld. CIT(A)] is prejudicial to the Appellant, bad in law and liable to quashed.
2. That on the facts and in the circumstances of the case the CPC erred in not considering the response filed by the Appellant against communication received under section 143(1)(a) of the Act.
3. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in dismissing the appeal of the Appellant without appreciating the facts and thereby the merits of the case.
4. That on the facts and in the circumstances of the case the CPC erred in not considering that the amount of INR 5,43,99,871 disclosed in clause 16(b) of the tax audit report pertains to refund of GST paid on exports & SEZ sales and that such refund amount is not taxable since such taxes paid were not claimed as an expense in the year in which it was paid.
5. Any other ground/s which may be raised at the time of hearing.”

3. Brief facts of the case show that assessee filed its return of income on 28/1/2022 at a total income of Rs. 218,041,070/-. Assessee received a communication under section 143(1)(a) of The Act wherein there was a proposal to add a sum of Rs. 54,399,871/- to the returned income being goods and service tax refund received. The assessee submitted a response on 30/5/2022 opposing the above adjustment as it was claimed that it is a refund of surplus goods and service tax paid and never claimed as an expenditure in profit and loss account. Despite the above fact an intimation was passed under section 143(1) on 13/11/2022 which was received by the assessee on the same date and the total income of the assessee was determined at Rs. 272,440,940/-.
4. The assessee preferred an appeal before the learned CIT-A on 20/1/2023 wherein the due date of filing of the appeal was 13/12/2022 thereby causing a delay of 38 days. Assessee made a submission on merits of the case on 8/7/2024. However as the appeal was delayed by 38 days the learned CIT-A looked at form number 35 para number 14 – 16 and stated that assessee has stated that there is a delay in filing of the appeal, but the reply of the reasons is merely that ‘as a tax consultant are busy with tax filing deadline hence there was a delay by them’ The learned CIT-A did not find the above reason as a sufficient cause and thereafter relying upon the several judicial precedents held that appellant has neither mentioned specific ground for delay in filing of the appeal

and not furnished anything to prove that it acted diligently and was not guilty of negligence and therefore the above delay was not condoned and appeal of the assessee was not admitted. Hence, appeal of the assessee was dismissed.

5. Assessee aggrieved with the same has preferred this appeal. The learned authorized representative submitted that delay was nominal and further an affidavit of Mr. Deepak Kamath, partner of K S Aiyar & Co., was submitted, which states that on 13 November 2022 he received an email from the accountant of the company stating that the intimation under section 143(1) of the Act was received by the company and there was a screenshot of the adjustment attached to such mail. The chartered accountant states that he was busy during that time for filing of tax returns for UK and USA based foreign subsidiaries and that prevented him from paying close attention to the nature of the proceedings. He presumed that the company received a communication under section 143(1)(a) of the Act and submitted a response dated 13 November 2022 at online portal. Subsequently on receiving the notice of outstanding demand on 13 January 2023, the chartered accountant realized that the communication dated 13 November 2022 was an intimation. Within seven days of such realization, he assisted the company in filing an appeal before the CIT(A) and thereby a delay of 38 days caused in filing the appeal.

6. He submitted that this is an affidavit of the chartered accountant and therefore the delay should have been condoned. He submitted that in form number 35 at column number 15 only few lines can be written and therefore the assessee did not made a detailed application for condonation of delay along with the affidavit. Therefore, he submitted that the delay may be condoned.
7. He also submitted on the merits of the case that it is an issue of taxability of GST refund which has never been claimed by the assessee in the return of income as an expenditure and therefore these are the balance sheet items for which there cannot be any income chargeable to tax in the hands of the assessee. He referred to page number 41, 176 and 184 of the paper books filed and submitted that this clearly shows that there is no income chargeable to tax and therefore even on the merits, the addition is wrongly made.
8. The learned departmental representative vehemently submitted that assessee has not given a sufficient reason but given a general reason for condonation of delay in filing appeal before the learned CIT-A for 38 days and therefore no fault can be found with the order of the learned CIT-A in not condoning the delay. He submitted that as the learned CIT-A has not decided the issue on the merits of the case, those cannot be decided here.
9. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The simple issue involved

in this appeal is that the assessee has filed appeal late by 38 days before the learned CIT–A. In form number 35 at Para number 15 the assessee submitted that as the chartered accountant was busy, there is a delay in filing of the appeal. Before us the assessee has submitted a detailed affidavit of the chartered accountant of the assessee wherein the complete delay has been explained. It is not the case that the chartered accountant did not act. It is the case where the chartered accountant has under mistaken belief filed a reply on the online portal. The explanation of the chartered accountant clearly shows that that an email was received from the accountant of the company on 13 November 2022 along with the screenshot of the adjustment made. As the chartered accountant was busy for filing income tax returns for his overseas clients which prevented him from paying close attention to the nature of the proceedings and he presumed that the company received a communication under the Act, and he filed a response on 13 November 2022 itself on the online portal. Therefore, it is not the case of the carelessness on behalf of the assessee or its chartered accountant, but merely a case of misapprehension.

10. It is also correct that in form number 35 the assessee has given a cryptic answer for delay. The explanation of the assessee is that there is no space available for filing a condonation of delay at that particular column.

11. In this case the delay is small and not inordinate. Nobody gains by filing an appeal late when substantial demand has arisen against him.
12. Honourable Supreme Court in *Collective Land Acquisition versus Mst. Katiji* 1987 taxmann.com 1072 (SC)/[1987] 28 ELT 185 (SC) has categorically held that :-

“4. 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. "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 and pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, the 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. It must be grasped that 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.

5. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

13. We find that the learned CIT–A has taken a very pedantic approach in considering the delay caused in filing of the appeal which is nominal. We find that now because of the affidavit of the chartered accountant filed before us, there is a sufficient cause of delay in filing of appeal by 38 days.
14. In view of the above facts and the affidavit of the chartered accountant, we are of the opinion that the delay caused of 38 days is sufficiently explained by the assessee. Accordingly, we direct the learned CIT–A to condone the delay and admit the appeal of the assessee and then decide on the merits of the case.
15. In the result appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 30th day of December, 2024.

Sd/-

(SOUNRARAJAN K.)
JUDICIAL MEMBER

Bangalore,
Dated, the 30th December, 2024.

/Desai S Murthy /

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Copy to:

1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.