

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER
ITA No.3203/M/2024
Assessment Year: 2017-18**

Santosh More Room No.6/14, Hirji Bhojraj Chawl, Kalachowki S.O., Ambi Khalasa, Mumbai-400033. Pan:AOTPM3679Q	Vs.	Income Tax Officer 20(3)(1) Room No. 621, 6 th Floor, Piramal Chambers, Lalbaug, Mumbai- 400012.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rayan Saldanha

Revenue by : Ms. Usha Gaikwad, Sr. A.R.

Date of Hearing : 17.10.2024

Date of Pronouncement : 30.12.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated 10.08.2023 passed by NFAC Delhi for assessment year 2017-18 on following grounds of appeal:

1. "The assessee prays that the delay of 249 days in filing the appeal be condoned.

2. *The Ld NFAC erred in confirming addition of cash deposited in bank account during the demonetization period (09.11.2016 to 30.12.2016) of Rs 18,53,500/- u/s 69A of the Act. The Ld NFAC failed to appreciate that:*
 - *The assessee is a milk vendor and the cash was routinely deposited out of proceeds from sale of milk. The said cash was received from customers of the assessee who purchased milk during the demonetization period in November to December 2016.*
 - *As per Circular S.O. 3408(E) dated 08.11.2016 issued by Finance Ministry which provides a list of exemptions, purchase of milk can be made in cash using old Rs 500 and Rs 1,000 notes.*
 - *The assessee purchases milk by cheque in bulk quantity from wholesalers Prabhat Dairy Ltd and Govind Milk & Milk Products Pvt Ltd.*
 - *Such cash deposits were duly recorded in the books of accounts of the assessee and hence the provisions of Section 69A of the Act cannot apply.*
 - *The said cash deposits were offered to tax and are a part of the sales.*
 - *There was no change in the business activity of the assessee during the demonetization period.*
 - *The quantum of cash deposited was same as last year and same as previous and subsequent months. No excess cash was deposited.*
3. *The appellant prays that the above addition of cash deposited in old notes during Demonetization period u/s 69A of the Act of Rs 18,53,500/- may be deleted.”*

Brief facts of the case are as under:

2. At the outset, the Ld.AR submitted that, there is delay of 249 days in filing the present appeal before this *Tribunal*. The Ld.AR submitted that, the CA of the assessee left in the midway at the time when the appeal was pending before the first appellate authority. The assessee was therefore not aware about the status of

the proceedings and, subsequently came to the notice of the assessee that, the impugned order has been passed on 10.08.2023, causing delay of 249 days in filing the present appeal before this *Tribunal*.

2.1. The Ld.AR thus prayed for considering the circumstances that prevailed due to which the assessee could not file the appeal before this *Tribunal* within the period of limitation.

2.2. The Ld.AR thus prayed for the delay to be condoned and he placed reliance on the following decisions in support of the submission.

- a) *Hon'ble Jurisdictional High Court in the case of CIT & Another Vs. ISRO Satellite Center, in ITA No. 532 of 2008 vide order dated 28/10/2011*
- b) *Coordinate Bench of this Tribunal in the case of Smt. Shakuntala Hegde, Legal Heir of Mr. Ramakrishna Hegde Vs. ACIT, in ITA No. 2785/Bang/2004 order dated 25/04/2006*
- c) *Hon'ble High Court of Madras in the case of Commissioner of Income-tax Vs. K.S.P.Shanmugavel Nadar (1987) 30 Taxmann 133 (Madras).*
- d) *Hon'ble Tribunal in the case of M/s. Midas Polymer Compounds Pvt Ltd Vs. ACIT in ITA No.288/Coch/2017 dated 25.06.2018.*
- e) *Hon'ble High Court of Bombay in the case of Anatek Services Pvt Ltd Vs. Asst.Commissioner of Income-tax-10(1) in ITA No.102 of 2018 dated 11.02.2022.*
- f) *Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST.Katiji and Others (1987) 167 ITR 471 and*
- g) *Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507.*



- h) *Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733 and*
- i) *Commissioner of Income-tax Vs. West Bengal Infrastructure Development Finance Corporation limited (2011) 334 ITR 269 (SC).*
- j) *M/s. Space Employees Co-operative Housing Society Ltd. vs. ITO in ITA Nos. 1072 to 1074/Bang/2023 vide order dated 31/01/2024*

2.3. On the contrary the Ld.DR though objected the delay to be condoned could not controvert the submissions of the Ld.AR.

We have perused the submissions advanced by both sides in the light of records placed before us.

2.4. From the affidavit filed by the assessee, there does not arise any malafide intention on behalf of assessee for not filing the present appeals before this *Tribunal*.

2.5. In our view, the assessee has made out a reasonable cause for the delay that is caused in filing the present appeals before this *Tribunal*. Nothing to establish any contrary intention has been filed by the revenue before this *Tribunal*. In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

2.6. We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to



enable the courts to do substantial justice to parties by disposing of matters on de 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 of 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.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

2.7. Considering the submissions by both sides and respectfully following the observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals as it is not attributable to the assessee. In any event, though the procedural law pertaining to the limitation has been drafted to construe it strictly, the fact remains that, considering such technicalities will not advance the cause of justice.

Accordingly the delay in filing appeal before this Tribunal by the assessee stands condoned.

3. On merits, it is submitted that the addition was made in respect of the cash deposited during demonetisation period.

3.1. At the outset, the assessee furnished documents as additional evidence and an application dated 15.10.2024 seeking admission of the same. It is submitted that the assessee is a retailer milkbooths and sells milk to various customers. The assessee has also enclosed chart showing receipts and payments from bank statement during the period 09.11.2016 to 30.12.2016, wherein, the assessee deposited cash in SBN notes. It is submitted that, the assessee is entitled for benefit under the notification being a retailer and sale of milk through booth. It is also submitted that, the cash deposited was accounted in the books of accounts and such cash sales prior to the demonetisation was never disputed in identical circumstances.

3.2. Based on the above the Ld.AR submitted that in the interest of justice the appeal may be considered based on the evidences filed by the assessee.

3.3. On the contrary the Ld.DR relied on orders passed by authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

4. The additional evidences field by the assessee are crucial and the fact that cash sales made by the assessee prior to the date of



demonetisation was never disputed by the Ld.AO, deserves to be considered to determine the nature of cash deposited by the assessee during the demonetisation period.

4.1. In the interest of justice we remit this issue back to the Ld.AO to verify the additional evidences field by the assessee in accordance with law. Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly grounds raised by the assessee stands partly allowed for statistical purposes.

In the result appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 30-12-2024.

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER

Place: Mumbai,

Dated: 30.12.2024

Snehal C. Ayare, Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT



BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai