

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” 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. 2136 & 2137/Kol/2024

Assessment Year: 2018-19

M/s Manali Properties & Finance Pvt. Ltd. (PAN: AACCM 9560 A)	Vs.	DCIT, Circle-7(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	10.12.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.12.2024
For the assessee / निर्धारिती की ओर से	Shri Manoj Kataruka, Advocate
For the revenue / राजस्व की ओर से	Shri Abhijit Kundu, CIT DR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

The above both the appeals are preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the “Ld. CIT(A)”) for the AY 2018-19. One is against the order u/s 143(3) and others an order passed u/s 270A of the Act by the A.O confirmed by the CIT(A).

Since the issues are common in both the appeals, hence are taken up together for disposal.

2. Brief facts of the case of the assessee are that the assessee is engaged in the business of trading, dealing, investment in shares and securities. The case of the assessee has been selected for scrutiny by the AO and the AO has added the sum of Rs. 6,14,83,565/- to the income of the assessee as income from other sources.

3. The said order has been challenged by the assessee before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed as the appeal was filed by the assessee in the delay of 561 days and 266 days and as per the Ld. CIT(A), the assessee has failed to prove the sufficient cause for delay in filing the both appeal.

Being aggrieved and dissatisfied the assessee has preferred the present appeal.

4. The Ld. Counsel appeared on behalf of the assessee instead of arguing in the merit of the case has only submitted that the assessee should have been given an opportunity to place his case before the Ld. CIT(A) as the delay was not intentional rather bonafide. The Ld. Counsel filed an Affidavit to establish the reasonable cause for delay.

5. Contrary to that the Ld. D.R supports the impugned order.

6. On perusal of the order of Ld. CIT(A), it appears to us that the appeal of the assessee have been dismissed on account delay as the Ld. CIT(A), did not find there sufficient and reasonable cause. We have perused the Affidavit filed by the assessee before us which is as follows:



Before the Notary Public, Kolkata

AFFIDAVIT

I, Smt. Parnasri Mitra, of 9, Ezra Street, Kolkata – 700 001, in the capacity as Director of M/s Manali Properties & Finance Private Limited do hereby solemnly affirm and state on oath as under:

1. That in the case of M/s Manali Properties & Finance Private Limited having PAN No. as AACCM9560A assessment order for AY 2018-19 was passed u/s 143(3) on 24.5.2021. Appeal was filed against the order u/s 143(3) before the CIT(A) on 5.1.2023. The column No. 2 mentioned in Form No. 35 regarding the date of the order and date of service of the order was kept as same whereas the date of service was only on 10th of November 2022.
2. That the CIT(A) vide order u/s 250 dated 27.9.2024 has dismissed the appeal of the company for AY 2013-14 on the ground that there was delay in filing of the appeal of 561 days and the reasons given for the delay were not sufficient and not acceptable.
3. That the company had while filing Form No. 35 made an application for condonation of delay as mentioned in column No. 15 of the said form which is in commensurate with the paragraph 5.1 of the order of the CIT(A) at page 7 of the said order wherein it has been mentioned that the delay was due to the reasons that the order was made known to the assessee only on 10th of November 2022.

REKHA TEWARI
NOTARY
Regn. No.- 10288/13
C.M.M.'s Court

09 DEC 2024

It has been mentioned that the company was under financial crisis during the peak Covid period and there was no counsel appearing in the matter and there was no knowledge about the order passed. In the CIT(A) order at page 4 the SOF of the company is quoted and it has been clearly stated that in the month of November 2022 on 15.11.2022 the advocate provided opinion that appeal was required to be filed.

4. That the assessee sought for delay of 561 days in Form no. 35 being unaware of the fact that the limitation period commences from the 'date of service of order' and not from the 'date of order'.
5. That the company denies receiving the assessment order on 24/05/2021 and once the order was noticed and seen by the company on 10.11.2022 the appeal was filed on 05.01.2023 which is within 60 days of the order served upon and therefore within the period of limitation.
6. That in the case of the company for AY 2018-19 penalty order was passed u/s 270A, dated 15.3.2022 which was ex parte and on similar circumstances the case could not be attended due to Covid and other problems arising to the company. The penalty order was also seen on 10.11.2022 and similarly appeal was filed against the penalty order on 5.1.2023.
7. That further in Form No. 35 the e-mail address mentioned was manaliproperties.roc@yahoo.com which is also same e-mail address in the Income Tax Portal whereas the assessment order was sent in e-mail id as taxincome126@gmail.com and therefore even the order could not be communicated through e-mail.
8. That even otherwise the Supreme Court in the case of **Cognizance for Extension of Limitation, [2022] 441 itr 722(SC)** has excluded the period from 15.3.2020 to 28.2.2022 for the purpose of limitation. Further in case where the period of limitation has expired between 15.3.2020 to 28.2.2022, notwithstanding the actual balance period of limitation remaining all persons shall have a limitation period of 90 days from 1st March 2022 or longer if the actual period is as so.
9. That it is again confirmed and stated that there was no delay in filing of appeal and without prejudice to the same the delay in filing of the appeal are due to bona-fide reasons beyond the control of the company and the delay is requested to be condoned and the appeal be taken up for hearing on merits.

VERIFICATION

I, **Smt. Parnasri Mitra**, the above-named Deponent, do hereby verify on oath that the contents of the Affidavit above are true to the best of my knowledge and belief and nothing material has been concealed or falsely stated.

Verified at Kolkata, this 9th Day of December, 2024.728163

MANALI PROPERTIES & FINANCE PVT. LTD.

REKHA TEWARI
 NOTARY
 Regn. No.- 10288/13
 C.M.M' s. Court
 Kolkata - 700 001

SOLEMNLY AFFIRMED AND DECLARED
 BEFORE ME ON IDENTIFICATION

P. Mitra
 Director / Authorised Signatory
 (DEPONENT)
 Status of appellant

7. 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."

7.1. 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, the Affidavit filed by the assessee as well as aforesaid judgment, we are inclined to give the assessee an opportunity to place his case before the Ld. CIT(A). Accordingly, the case of the assessee is restored in the file of Ld. CIT(A). The order of Ld. CIT(A) is hereby set aside and delay is hereby condoned. The Ld. CIT(A) is directed to hear the case of the assessee and pass an order afresh.

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

Order is pronounced in the open court on 31st December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 31st December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Manali Properties & Finance Pvt. Ltd., 9, Ezra Street Top Floor, Room No. 47, Kolkata-700001
2. Respondent – DCIT, Circle-7(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