

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“I” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &  
MS PADMAVATHY S, AM**

**I.T.A. No. 3466/Mum/2024  
(Assessment Year: 2019-20)**

<b>Shinsei UTI India Fund (Mauritius) Ltd.</b> 3 <sup>rd</sup> Floor, 355 Nex, Rue Du Savoir, Cybercity Ebene, Mauritius-72201. <b>PAN : AAKCS4031N</b>	Vs.	<b>ACIT (International Tax) Circle- 4(2)(1), Kautilya Bhawan, G Block, Bandra Kurla Complex, Bandra East, Mumbai-400051.</b>
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant /Assessee by** : Shri Nitin Agarwal, AR

**Revenue / Respondent by** : Shri Krishna Kumar, Sr. DR

**Date of Hearing** : 16.12.2024

**Date of Pronouncement** : 18.12.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)-58, Mumbai [for short 'the CIT(A)] dated 09.05.2024 for the AY 2019-20. The assessee raised the following grounds of appeal:

*“1. That on the facts and circumstances of the case, the Ld. CIT(Appeals) has grossly erred in not condoning the delay in filing of the appeal.*

*2. That on the facts and circumstances, the learned CIT(Appeals) failed to consider the fact that the delay in filing the appeal was not deliberate and was on account of delay in resolution to be provided by the Centralized Processing Centre ('CPC')/Assessing Officer ('AO') and thereby not attributable to the Appellant.*

*3. That on the facts and circumstances of the case, the learned CIT(Appeals) erred to comprehend that the term "sufficient cause" for condonation of delay should be interpreted liberally to advance substantial justice to the Appellant.*

*4. That on the facts and circumstances of the case, the Ld. CIT(Appeals) erred in not examining the Appellant's case on principles of natural justice considering the fact that in the intimation u/s 143(1), short term capital gain has been considered at INR 25,61,72,982/- instead of INR 12,80,86,490/- resulting in double taxation of the same income twice at different rates."*

2. The assessee is a foreign company registered under the laws of Republic of Mauritius. The assessee filed the return of income for AY 2019-20 on 19.09.2019 declaring a total income of Rs. 12,80,86,490/- arising out of Short Term Capital Gain (STCG) on sale of equity shares under section 115AD(1)(b)(ii) of the Income Tax Act, 1961 (the Act). The return was processed under section 143(1) of the Act on 05.06.2020 wherein the STCG declared by the assessee has been considered at Rs. 25,61,72,982/-. The assessee through ITBA portal requested for rectification by reprocessing the return of income on 08.04.2022 and the same was rejected by the Central Processing Centre (CPC). While the pending disposal of the rectification the assessee filed an appeal before the CIT(A) on 08.02.2023 against the intimation under section 143(1) of the Act. After considering the extension of limitation granted by the Hon'ble Supreme Court during Covid period there was a delay of 8 months in filing the appeal before the CIT(A). The assessee filed a petition before the CIT(A) stating that the assessee was exploring the alternate remedy by filing the petition for rectification and was raising multiple reminders for disposal of the said petition. The assessee further submitted that delay is due to covid situation and

due to the bonafide belief that the request of rectification would be processed by the CPC. The assessee also submitted that since the CPC did not respond to the various requests the assessee has preferred before the CIT(A) with a delay and accordingly requested for a condonation. However, the CIT(A) did not condone the delay and dismissed the appeal without going into the merits of the issue. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. We heard the parties and perused the material on records. The assessee filed the return of income declaring a total income of Rs. 12,80,86,491/- arising out of STCG on sale of shares. The CPC while processing the return under section 143(1) of the Act has considered the STCG at Rs. 25,61,72,982/-. The assessee filed a rectification request before CPC in this regard. Since the assessee was not getting any response to the rectification request, the assessee preferred an appeal before the CIT(A) with a delay of 8 months. It is argued by the ld AR that the delay is due to Covid pandemic and that the assessee was exploring the alternate remedy due to which there was a delay of 8 months in filing the appeal before the CIT(A). The ld AR further submitted that the CIT(A) has dismissed the appeal without condoning the delay without considering the reasons for delay which are genuine. It is relevant to take note of the following principles laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471)

*"When substantial justice and technical consideration 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"*

*"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".*

4. From the perusal of records we notice that the amount declared as STCG by the assessee has not been correctly considered while processing the return of income and the assessee has raised contentions against the same before the CIT(A). The reasons submitted for the delay in filing the appeal, i.e. covid pandemic and the assessee exploring the remedy by requesting rectification, in our considered view are sufficient cause and the assessee has no reason to delay the filing of appeal against the order of the CIT(A) except the bonafide belief that the relief will be granted through the rectification request. The Madras High Court in the case of CIT v. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) held that no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction.

5. Considering the above judicial precedence and the facts peculiar to the assessee, we are of the view that the CIT(A) is not correct in not condoning the delay and dismissing the appeal without considering the issues contended on merits. We therefore remit the appeal back to the CIT(A) with a direction to condone the delay and admit the appeal for adjudication on merits by calling for

relevant details. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

6. In result the appeal of the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 18-12-2024.*

**Sd/-**  
**(SAKTIJIT DEY)**  
**Vice-President**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**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**