



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

आयकरअपीलसं. / ITA No.828/PUN/2024

निर्धारणवर्ष / Assessment Year: 2010-11

Indrayani Seva Samiti Nyas, Pl No.135, Avdhu Sankul, Tapodham Colony, Talegaon, Dabhade, Pune – 410506. PAN: AAATI4386H	V s	The Income Tax Officer, Ward-9(2), Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri C.H.Naniwadekar –AR
Revenue by	Shri Sandeep P Sathe – DR
Date of hearing	09/12/2024
Date of pronouncement	31/12/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax,ADDL./JCIT(A)-1, Coimbatore
for Assessment Year 2010-11 dated 20.02.2024 passed u/sec.250
of the Income tax Act, 1961. The Assessee has raised the
following grounds of appeal :

*“1. The learned CIT(A) erred both on facts and law in not
condoning the delay in filing of appeal by the assessee. He failed to
appreciate the facts and submissions made in this behalf in its proper*



perspective. As such, the learned CIT(A) has erred in not providing sufficient opportunity of being heard in the matter on merits.

2. *The learned CIT(A) erred on facts and in law in not appreciating the fact that the learned AO has erred in making an addition of capital receipt of Rs.11,00,000 u/s 56(2) of the Act that was received by the assessee trust as a corpus fund towards the construction of hostel building for orphan girls. He failed to appreciate the facts, the detailed submissions as well as the law in this regard in its proper perspective.*

3. *The learned CIT(A) erred on facts and in law in not appreciating the fact that the learned AO has erred in denying the eligible exemption u/s 11 of the Act pursuant to the registration of the trust u/s 12A of the Act that is effectively applicable to the assessment year under consideration even if the registration is received in the next financial year. He failed to appreciate the facts, the detailed submissions as well as the law in this regard in its proper perspective.”*

Submission of Ld.AR:

2. Ld.Authorised Representative(Ld.AR) for the Assessee filed a written submission, part of it is reproduced as under :

“All notice and day to day matters regarding trust was looked upon by one of the trustee S R Kakade. He is B Com graduate and is in business. He has only working knowledge of business and no knowledge of tax laws. After AY 2011-12 there was simultaneously change in trustees. The trustees of the trust are graduate, retired bank officers, retired teachers and some of these are small businessman The trust work was looked after and was carried out by Mr. S. R. Kakade. The trustees of the trust are not aware of legal remedies available against addition made to the return of income of the trust i.e.11 lacs and against the demand of Rs.3,49,380/- raised by income tax officer

The previous tax consultant of the trust did not guide properly to the assessee regarding what action should be taken against addition made by AO Later on discussion with all trustees it was decided to change tax consultant and on 15th March 2021 appointed other chartered Accountant for income tax consultation After all discussion with the new consultant they were advised to file an appeal against addition



made by AO. All this happened absolutely inadvertently without any malafide intention

Due to lack of clarity and complete lack of knowledge of the trustees regarding filing of appeal, and frequent changes of trustees, the appellant was in discussion with the new consultant to decide about future course of action of issues involved and therefore there was a delay of in filing of present appeal. Also, the old consultant was not able to guide the assessee in a proper direction

Due to complete lack of knowledge and non-guidance of the tax consultant of the trust, the matter remained as it is and hence no appeals were filed by the trust

In all fairness and to meet the end of justice, we request your honor to consider above facts and circumstances and to condone the delay in filing the appeal.”

2.1 The ld.AR filed a paper book containing copy of Financial Statements for A.Y.2010-11, copy of Trust Deed, Affidavit of Trustee dated 15.07.2021, copy of Registration Certificate under section 12AA, dated 27.05.2011. Ld.AR submitted that there was valid reason for delay, hence delay may be condoned. Ld.AR submitted that on merits assessee have a strong case.

Submission of Ld.DR :

3. Ld.Departmental Representative(ld.DR) for the Revenue relied on the order of the AO and ld.CIT(A). Ld.DR submitted that there is an inordinate delay of more than 4000 days. The reasons are not sufficient. Ignorance of Law cannot be an excuse. Ld.DR also submitted that the facts mentioned in the condonation



application are contradictory. Ld.DR further submitted that as per the condonation application which is in the paper book, the Trustees' decided to change the Consultant and on 15.03.2021 appointed a new consultant. However, even after that appeal was filed on 30.10.2021. Thus, the delay from 15.03.2021 to 30.10.2021 has not been explained. Ld.DR submitted that the delay before 15.03.2021 has not been explained. Therefore, ld.DR submitted that order of ld.CIT(A) may be upheld.

Findings and Analysis:

4. We have heard both the parties and perused the records. It is an admitted fact that there was a delay of 3226 days in filing appeal before ld.CIT(A). However, in the Condonation Petition filed by the assessee, the assessee has mentioned that there was a delay of 4077 days. The Assessment Order under section 143(3) was passed on 30.11.2012 and assessee has filed appeal before ld.CIT(A) against the said order on 30.10.2021. Thus, we have calculated and the delay is of 3226 days. Ld.CIT(A) in Para 5.17 held that there was no sufficient reason for delay and hence, ld.CIT(A) dismissed the appeal in *limine* on account of delay.

4.1 Ld.AR has relied on the decision of ITAT Pune Bench in DCIT vs. Atlas Coco (India) Limited in ITA NO.649/PUN/2013 and ITA NO.1726/PUN/2014. The facts of these case in DCIT Vs. Atlas Coco (India) Limited are different to that of the case of the assessee. In that case, there was a delay of 1018 days, where as in the case of assessee there is delay of more than 08 years without sufficient reasons, hence the case law relied on by assessee is distinguishable on facts.

5. We have perused the condonation petition and Affidavit filed by the Trustees' of the Assessee. The Trustees' merely blamed that their Tax Consultant did not guide them properly. Trustees also pleaded that they do not have knowledge of tax laws. However, on perusal of the petition, it is also observed that one of the Trustees is a B.Com Graduate; another Trustee is Graduate and Retired Bank Officer which shows that Trustees were well educated. The Trustees received order under section 143(3) on 30.11.2012 and they have changed the Tax Consultant on 15.03.2021. The Assessee has not explained the delay from the period i.e.30.12.2012 to 15.03.2021. This is an inordinate delay of more than 8 years. Assessee has not explained the said delay of



more than 8 years. Even after changed of Tax Consultant, Assessee took more than 07 months to file appeal before the Id.CIT(A). In these facts and circumstances of the case, we are convinced that there was no sufficient cause for delay in filing appeal before Id.CIT(A). Each day of delay has to be explained by the assessee and the Assessee failed to explain the same.

5.1 The Hon'ble Supreme Court in the case of **Basawaraj & Anr Vs. Spl.Laq Officer on 22nd August, 2013** has held as **under:**

Quote, "9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay....."

.....



15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature ” Unquote.*

5.2 The Hon’ble Madras High Court in the case of Siva Industries and Holdings Ltd., Vs. ACIT [2024] 461 ITR 133 (MAD HC), dated 03.08.2023 held as under :

“12.....We find that there is an inordinate delay of 2139 days and the reasons adduced are not convincing rather show that the petitioner was negligent, lethargic and casual in availing the remedy of appeal. More importantly, we are not convinced with the bonafide of the petitioner who had raised grounds which apart from being untrue, are mutually destructive and thus unacceptable.

13. Before we part, we intend to refer to the following decisions which lay down the guidelines to be borne in mind by a Court while considering a request to condone the delay:

i. Basawaraj v. Land Acquisition Officer, [2013] 14 SCC 81:

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more



than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336], Mata Din v. A. Narayanan [(1969) 2 SCC 770], Parimal v. Veena [(2011) 3 SCC 545] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157])"

ii. Ajay Dabre v. Pyare Ram 2023 SCC Online SC 92:

"13. This Court in the case of Basawaraj v. Special Land Acquisition Officer while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay



without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

.....

15. Applying the law laid down by the Hon'ble Apex Court to the facts of the present case, we find that the petitioner was not vigilant rather negligent and there is lack of bonafide even in explaining the delay. The petitioner had failed to demonstrate that there was "sufficient cause" for the delay of 2139 days in filing the Tax Case Appeal and thus the petition is liable to be dismissed."

5.3 Thus, respectfully following the decisions of Hon'ble Supreme Court and Hon'ble High Court(supra), we hold that there was no sufficient reason for such an inordinate delay of more than 8 years, therefore, we hold that Id.CIT(A) was correct in dismissing the appeal in limine, accordingly, we uphold the order of Id.CIT(A). Accordingly, Ground No.1 raised by Assessee is dismissed.

5.4 Once Id.CIT(A) has dismissed the appeal in limine on account of delay, Id.CIT(A) do not have any jurisdiction to decide the merits of the addition.

5.5 In this case, Id.CIT(A) has dismissed the appeal in limine on account of delay and we have upheld the decision. We have also held in earlier para that Id.CIT(A) do not have jurisdiction to decide merits of the addition, once the appeal is dismissed in limine. In these facts, the grounds of appeal raised by assessee on merits are infructuous and hence dismissed. Accordingly, Grounds of appeal raised by the assessee are dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 31st December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 31st Dec, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.