

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.469 & 470/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)

Kakumanu Naveen Kumar Flat No. 201, Venkata Raghava Residency Radio Colony, Beside Med Plus Medical Shop Vijayawada – 520008 Andhra Pradesh [PAN: CMSPK2757G] (अपीलार्थी/ Appellant)	v.	ITO – Ward – 2(1) Central Revenue Building M.G. Road, Vijayawada Andhra Pradesh - 520002 (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri R.S. Lakshmi Narayana, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. AparnaVilluri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	01.01.2025
घोषणा की तारीख/Date of Pronouncement	:	10.01.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre,

Delhi [hereinafter in short “Ld.CIT(A)”] vide respective DIN & Order No. as stated below: -

ITA No. & A.Y.	DIN & Order No.	Dated
ITA No. 469/VIZ/2024 (A.Y. 2017-18)	ITBA/NFAC/S/250/2024-25/1068521576(1)	10.09.2024
ITA No. 470/VIZ/2024 (A.Y. 2017-18)	ITBA/NFAC/S/250/2024-25/1068521776(1)	10.09.2024

2. On perusal of ground of appeal filed by the assessee, we observe that in both these appeals, assessee has challenged the ground relating to dismissing condonation petition by the Ld. CIT(A) without condoning delay of 85 days and 23 days in filing the appeal before First Appellate Authority.

3. At the outset, Ld. Authorised Representative [hereinafter in short “Ld.AR”], inviting our attention to the order of the Ld.CIT(A) submitted that the Ld.CIT(A) did not condone the delay of 85 days & 23 days in filing the appeals before First Appellate Authority stating that assessee was not able to establish “sufficient cause” for delay in filing appeal and dismissed the appeal without going into the merits of the case. Further, Ld.AR submitted that the Ld.CIT(A) did not appreciate the submissions properly and without giving any reasons for not condoning the delay and except stating that assessee was not able to establish “sufficient cause” for delay in filing appeal, rejected the condonation petition. Ld.AR submitted that the delay may be condoned and the appeals may be restored to the file of the Ld.CIT(A) for deciding on merits and

pleaded that one more opportunity may be provided to the assessee in the interest of justice.

4. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] strongly placed reliance on the order of the Ld.CIT(A) in rejecting the condonation petition. Ld. DR strongly opposed for condonation of delay.

5. We have heard both the sides and perused the material available on record, we notice that the moot question to be adjudicated is with respect to condonation of delay. Broadly, we are of the view, that the Courts and the quasi-judicial bodies are empowered to condone the delay, if a litigant satisfies the Courts that there was sufficient reason for availing the remedy after the expiry of limitation. Such reasoning should be to the satisfaction of the Court. The expression “**sufficient cause or reasons**” as provided in sub-section (5) of section 253 of the Act is used in identical position in the Limitation Act 1963, and in CPC. Such expression has also been used in other sections of the Income Tax Act such as section 273, 274, etc. Keeping in mind, the authoritative pronouncement from Hon’ble Apex Court, it is admitted position that the words “**sufficient cause**” appearing in sub-section (5) of section 253 of the Act should receive a liberal construction so as to advance substantial justice. It must be remembered that in every case of delay, there can be some lapses on the part of the litigant concern. That alone is not enough to turn down the plea and to shut

the doors against him, unless and until, it makes a mala-fide or a dilatory statutory, the court must show utmost consideration to such litigant. Further the length of delay is immaterial, it is the acceptability of the explanation and that is the only criteria for condoning the delay.

6. In such a situation, no doubt filing of an appeal is a right granted under the statute to the assessee and is not an automatic privilege, therefore, the assessee is expected to be vigilant in adhering to the manner and mode in which the appeals are to be filed in terms of the relevant provisions of the Act. Nevertheless, a liberal approach has to be adopted by the appellate authorities, where delay has occurred for “**bona fide reasons**” on the part of the assessee or the Revenue in filing the appeals. In matters concerning the filing of appeals, in exercise of the statutory right, a refusal to condoned the delay can result in a meritorious matter being thrown out at the threshold, which may lead to miscarriage of justice. 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.

7. The Hon’ble Apex Court in a celebrated decision in **Collector, Land Acquisition v. Mst. Katiji & Ors. [167 ITR 471]** opined that when technical consideration and substantial justice are pitted against each other, the courts are expected to further the cause of substantial justice. This is for the reason that an

opposing party, in a dispute, cannot have a vested right in injustice being done because of a non- deliberate delay. Therefore, it follows that while considering matters relating to the condonation of delay, judicious and liberal approach is to be adopted. If “sufficient cause” is found to exist, which is bona-fide one, and not due to negligence of the assessee, the delay needs to be condoned in such cases. The expression ‘**sufficient cause**’ is adequately elastic to enable the courts to apply law in a meaningful manner, which sub-serves the end of justice that being the life purpose of the existence of the institution of the courts. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. This means that there should be no malafide or dilatory tactics. Sufficient cause should receive liberal construction to advance substantial justice. The Hon’ble Apex Court in **Collector, Land Acquisition vs Mst. Katiji & Ors. (167 ITR 471)** observed as under:-

“3. 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.”

8. In the light of the above judicial pronouncements and keeping in view the principles of natural justice, we are of the considered view that the *lis* between the parties be decided on merits and no person should be condemned unheard. Therefore, the delay on the part of the assessee in filing appeals before Ld.CIT(A) is condoned and the appeals are remanded back to the file of Ld.CIT(A) to decide the appeals filed by the assessee on merits. It is needless here to mention that before passing the order of assessment, Ld. CIT(A) shall provide sufficient opportunity of hearing to the assessee. Before parting, we may make it clear that our decision to restore the matter back to the file of Ld.CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Ld. CIT(A) independently in accordance with law.

9. In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 10th January, 2025.

Sd/-
(के.नरसिम्हा चारी)
(K.NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 10.01.2025
Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रति लिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Kakumanu Naveen Kumar**
Flat No. 201, Venkata Raghava Residency
Radio Colony, Beside Med Plus Medical Shop
Vijayawada – 520008
Andhra Pradesh
2. राजस्व/ The Revenue : **ITO – Ward – 2(1)**
Central Revenue Building
M.G. Road, Vijayawada
Andhra Pradesh – 520002
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam