

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" PATNA BENCH"**  
**PATNA**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI SANJAY GARG, JUDICIAL MEMBER**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 647/Pat/2024**  
**Assessment Year: 2015-16**

**Dipak Kumar Singh & Sons HUF,**  
Flat No. 304, Sant Vihar Apartment,  
Lohanipur, Patna - 800003 ..... **Appellant**  
[PAN: AAJHD0355A]

**vs.**

**Income Tax Officer**  
**Ward 6(2),**  
Patna – 800001 ..... **Respondent**

**Appearances by:**

Assessee represented by : Shri Shailendra Sinha, AR  
Department represented by : Shri Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 15.01.2025  
Date of pronouncing the order : 20.01.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. In this case, there is a delay of 3 days for which the assessee has filed a petition for condonation in which it has been mentioned that aged mother of assessee being ill, the appeal was slightly delayed in filing of the appeal. Considering the shortness of delay and the reasons mentioned in the said petition, the delay is hereby condoned and the appeal is admitted for adjudication.

2. The present appeal arises from order dated 12.09.2024, passed u/s 250 of the Income Tax Act, 1961 (hereafter 'the Act') by the Ld.

Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

3. In this case, the Ld. AO passed an order dated 23.12.2019 u/s 147 read with section 144 of the Act. Through this order, he assessed long term capital gains of Rs. 36,76,169/-. Aggrieved with this action, the assessee approached the Ld. CIT(A) but could not succeed as the Ld. CIT(A) declined to condone a delay of 778 days in filing of the said appeal. Before the Ld. CIT(A), the assessee claimed that the delay was on account of ignorance of law and the assessee was alerted for filing the appeal only when they received a notice proposing levy of penalty u/s 271(1)(c) of the Act. Thereafter, the Ld. CIT(A) has discussed the issue of delayed filing with the help of several authorities on the subject and has declined to condone the said delay due to which the appeal was dismissed.

3.1 Further aggrieved with the action of Ld. CIT(A), the assessee is in appeal before us with the following grounds:

*“1. For that the order of the learned assessing officer is bad both in law and on facts.*

*2. For that the learned assessing officer has erred in initiating proceeding under Section 148 of the Act merely on the ground that a development agreement was entered into on 13.10.2014 which gave rise to a presumption that an income under the head capital gains arose on the date of the agreement without anything further.*

*3. For that the learned assessing officer has erred in completing the assessment ex parte to the best of his judgement under Section 144 of the Act notwithstanding the fact that no notice was ever served in the mode and manner prescribed under the Act and that the same are also not displayed on the web portal of the Income Tax Department.*

*4. For that the learned assessing officer has erred in computing income from capital gains solely on the basis of the development agreement without taking notice of the fact that the building plan-map was sanctioned by the competent authority only on 28.01.2017 and prior to such date the appellant did not acquire any right to receive income as such alleged right was dependent upon necessary permissions from the competent authority and that on the date of agreement it was at best a hypothetical income.*

*5. For that the learned assessing officer also erred in computing income from capital gains solely on the basis of the development agreement without taking notice of the fact that an area of 1668.75 square feet was allotted comprising two*

*small flats on the same floor comprising of a single residential unit only which also qualified for exemption under Section 54F of the Act.*

*6. For that the learned assessing officer erred in computing income from capital gains solely on the basis of the development agreement without taking notice of Section 45 (5A) inserted by the Finance Act, 2017 which contemplate chargeability to capital gains only in the year in which a certificate of completion for whole or part of the project is issued by a competent authority and that the provisions being beneficial in nature were retrospective in operation and that on such construction no such certificate of completion having been issued in the assessment year under consideration the order of assessment bringing to tax a hypothetical income is vitiated in law and is arbitrary.*

*7. For that in any view of the matter the order of assessment bringing to tax income from capital gains on the basis of the development agreement is per se arbitrary and illegal and therefore, merit to be set aside.*

*8. For that other various reasons regular time of hearing.”*

4. Before us, the Ld. AR stated that the assessee should not be made to pay a heavy price for ignorance of law and improper guidance by the income tax consultant. The Ld. AR averred that in case the delay was to be condoned then the assessee has a good case on merit. The Ld. DR argued that a delay of 778 days could not merely be brushed aside by pleading ignorance of law.

5. We have carefully considered the arguments of Ld. AR/DR and also gone through the records. A reading of the judicial precedents on the issue of condonation of delay, the following case laws would be relevant:

i. In *N. Balakrishnan v. M. Krishnamurthy* AIR 1998 (SC) 3222, the Supreme Court of India has explained the scope of limitation and condonation of delay, observing as under:

*"... The primary function of a Court is to adjudicate the dispute between the Parties and to advance substantial Justice, Time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. 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... for the redress of the legal injury so suffered... the law of limitation is thus founded on public policy...."*  
(p. 3224)

ii. In *Shankar Rao v. Chandrasen Kunwar* [1987] Suppl. SCC 338, the Supreme Court of India took the view that the Court should

not adopt an injustice-oriented approach in rejecting the application for condonation of delay.

- iii. In *New India Insurance Co. Ltd. v. Smt. Shanti Misra* [1977] 47 Comp. Cas. 453 (SC); the Supreme Court of India held that discretion given by section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression 'Sufficient Cause' should receive a liberal construction.
- iv. In *Shakuntala Devi Jain v. Kuntal Kumari* AIR 1969 SC 575, the Supreme Court of India held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.
- v. In *O.P. Kathpalia v. Lakhmir Singh* AIR 1984 SC 1744, the Supreme Court of India held that, if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.
- vi. In *State of Haryana v. Chandra Mani* AIR 1996 SC 1623, the Supreme Court of India considered a large number of its earlier judgments including *Binod Bihari Singh v. Union of India* [1993] 1 SCC 572; *Shakambari & Co. v. Union of India* [1993] Suppl. (1) SCC 487; *Warlu v. Gangotribai* [1995] Suppl. (1) SCC 37; *Ramlal v. Rewa Coalfields Ltd.* AIR 1962 SC 361; *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [1979] 118 ITR 507, *Mata Din v. A. Narayanan* AIR 1970 SC 1953, and held that the expression 'each day's delay must be explained', does not mean that a pedantic approach should be made and it must be applied in a rational common sense pragmatic manner.
- vii. The Supreme Court of India in *Collector, Land Acquisition v. Mst. Katiji* [1987] 167 ITR 471 and many other cases on the subject, culled out the following principles relating to condonation of delay, which are reproduced from judgment, because of the all-time importance of the subject:

*"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.*

3. *'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.*
4. *When substantial justice and technical considerations 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.*
5. *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.*
6. *It must be grasped that 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." (p. 473)"*

5.1 It is felt that the benefit of doubt must be given to the assessee and he must have a chance to prove his bonafides before the First Appellate Authority. We accordingly direct that delay should be condoned and this appeal should be adjudicated by the Ld. CIT(A). The matter is remanded back accordingly.

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

Order pronounced in the court on 20.01.2025

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 20.01.2025  
AK, PS

*Copy of the order forwarded to:*

1. Amit Kumar Singh,
2. Assistant Commissioner of Income-tax, Circle-4(1), Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches