

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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. No. 2113/Kol/2024**  
**Assessment Year: 2022-23**

Sharda Sons Resources Pvt. Ltd.  (PAN: AAECM 1558 L)	Vs.	ITO, Ward-1(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	13.03.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	02.04.2025
For the assessee / निर्धारिती की ओर से	Shri Devesh Poddar, A.R
For the revenue / राजस्व की ओर से	Smt. Monalisha Pal Mukherjee, JCIT, Sr. D.R

**ORDER / आदेश**

**Per Pradip Kumar Choubey, JM:**

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals)- NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 09.08.2024 for AY 2022-23.

2. It appears from the report of the registry that the appeal has been filed after a delay of 8 days for this the assessee has filed condonation petition., which are as follows-

*“ We understand there is a delay of about 10 days in filing of this appeal. This incidental delay was caused due to the fact that the office of CA/A.R of the assessee was preoccupied with audit and ITR filing work which majorly had to be done by 30<sup>th</sup> September, 2024..*

*Thereafter, on further consultation, when advice to file the appeal before ITAT immediately the documents was prepared, challan was deposited and the appeal has been filed. The assessee should not be a sufferer at the cost of its CA/AR*

*It is prayed that this unintentional incidental delay caused may kindly be condoned and the appeal of the assessee be heard and adjudicated upon on merits.*

*We shall be obliged for your kind consideration on the above.”*

On perusal of the condonation petition, the reason for delay in filing the appeal seems to be genuine and bonafide. The Ld. D.R did not raise any objection in condoning the delay. Keeping in view, the condonation petition as well as judicial pronouncement that the case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee are that the assessee filed its return of income declaring total income of Rs. 1,59,60,300/-. The return was duly processed and case of the assessee was selected for scrutiny. Notice u/s 143(2) was duly issued. The AO after considering the submission and documentary evidences filed by the assessee made an addition of Rs. 1,42,52,288/- under unexplained credit. The AO has also added an amount of Rs. 5,08,805/- in respect of cessation of liability as discussed above and assessed the total income of Rs. 3,07,22,423/-.

4. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed on the ground of limitation as appeal has been filed beyond the statutory limit of filing the appeal.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

5. The Ld. Counsel instead of arguing into the merit of the case has only submitted that the Ld. CIT(A) did not condone the delay which was bona fide and it was just a delay of 25 days and passed an order on technical grounds. The Ld. Counsel of the assessee prays for restoration of this appeal before the Ld. CIT(A) by condoning the delay.

6. The Ld. D.R though supports the impugned order but did not raise any objection in restoring the appeal of the assessee to the file of Ld. CIT(A).

7. Upon hearing the submission of the counsel of the respective parties, we have perused the order passed by the Ld. CIT(A) and find that the Ld. CIT(A) has disposed of the appeal without discussing into the merit of the case rather only on this ground that the appeal has been filed after a prescribed time limit of 30 days and the reasons assigned by the assessee is not satisfactory.

8. The Hon'ble Apex Court in the catena of decision has time without number has held that the case should be disposed of on merit not on technical issue. In the present case, there is a delay of only 25 days and the reasons which has been assigned by the assessee is that the delay is mainly because the assessee found its inadvertently unaware of the issuance of the order issued u/s 147 of the Act. It has further been mentioned by the assessee that subsequently upon receiving the order they remained unaware of the procedural steps necessary to file appeal in response.

9. 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."*

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."*

10. Keeping in view the facts, the reason as stated in the affidavit as well as considering the view of the Hon'ble Apex Court, we are inclined to give an opportunity to the assessee to place its case before the CIT(A). Delay as occurred is here by condoned. The order of Ld. CIT(A) is hereby set aside. The case of the assessee is hereby restored in the file of Ld. CIT(A) with this direction to decide the case after hearing the assessee. The assessee is hereby directed to place its case before the Ld. CIT(A).

In the result, the appeal filed by the assessee allowed for statistical purposes.

Order is pronounced in the open court on 2<sup>nd</sup> April, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 2<sup>nd</sup> April, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sharda Sons Resources Pvt. Ltd., 29/1/A, Chandra Nath Chatterjee Street, LP-UG, Ground floor, West Bengal-700025
2. Respondent – ITO, Ward-1(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata