

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
CUTTACK**

(VIRTUAL HEARING AT KOLKATA)

**SHRI DUVVURU RL REDDY, VICE PRESIDENT
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 148/CTK/2025
(Assessment Year 2011-12)**

Pramod Kumar Sahoo,

At/PO: Telkoi, Dist: Keonjhar,

Odisha - 758019

[PAN: AZWPS9723R]

..... **Appellant**

vs.

**ITO, Keonjhar Ward,
Keonjhar**

..... **Respondent**

Appearances by:

Assessee represented by : None

Department represented by : S.C. Mohanty. Sr. DR

Date of concluding the hearing : 29.04.2025

Date of pronouncing the order : 02.05.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. The present appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), Addl./JCIT(A)-11, Mumbai [hereafter “the Ld. CIT(A)”] vide order dated 07.01.2025 for AY 2011-12, against the order passed by the Ld. AO. It is seen that before the Ld. AO there was absolutely no response to notices fixing the dates for hearing after the proceedings had been initiated u/s 147 of the Act. Thereafter, the Ld. AO proceeded to add Rs. 12,00,000/- on account of expenditure from unknown sources incurred in the marriage ceremony of the assessee's daughter.

1.1 Before the Ld. CIT(A), the assessee filed the appeal with a delay of 1726 days. In justification of the said delay, the assessee had mentioned that due to mental stress triggered by ongoing divorce proceedings of his daughter, he could not file the appeal in time before the Ld. CIT(A). It is seen that the Ld. CIT(A) has mentioned in para 5.3 at page 11 of the impugned order that the reasons cited by the assessee were general in nature and it has been mentioned that the proprietary cement business apparently continued during this period. The Ld. CIT(A) has also mentioned that the medical report submitted before him related to a period from July 2018 onwards and that there is no medical report for the period December, 2014 to June 2018. In this manner, the Ld. CIT(A) has not condoned the delay and has dismissed the appeal in limine.

2. Aggrieved with this action of Ld. CIT(A), the assessee has filed the present appeal in which the first ground challenges the action of Ld. CIT(A) in not condoning the delay. It is noteworthy that nothing has been present by way of evidence to enable us to disagree with the Ld. CIT(A) and none appeared on behalf of the assessee on the last date of hearing. In any case this case is being taken up with the assistance of Ld. DR.

2.1. At this juncture, it is necessary to delve into the genesis of limitation and how a judicial forum needs to deal with matters pertaining to condonation of delay.

2.2. Almost all the tax laws, whether they relate to direct taxes or Indirect taxes, contain provisions for condonation of delay in filing appeals, if the appellant (whether it is the taxpayer or the revenue) proves to the satisfaction of the appellate authority that he had sufficient cause for not filing the appeal within time. The genesis for such provisions can be traced to section 5 of the Limitation Act, 1963, which reads as follows:

"Extension of prescribed period in certain cases. — Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the

prescribed period if the appellant or the applicant satisfies the Court that he has sufficient cause for not preferring the appeal or making the application within such period.

Explanation: The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

2.3. The two essential ingredients for condoning delays are: (i) the existence of 'sufficient cause', and (ii) the satisfaction of the competent authority that such sufficient cause was proved as existing. Thus, the first issue about the existence of sufficient cause covers the factual matrix in respect of which the onus to prove is squarely on the litigant, while the second issue about 'satisfaction' covers the discretionary area in which the competent authority, this Bench, is expected to act. It is by now well settled that the expression 'sufficient cause' has to be understood to mean a cause beyond the control of the appellant or one which the appellant, even with the exercise of due care and attention, could not avoid. The expression is required to be interpreted liberally so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. Further, it is a general principle of law that whenever a Court is vested with a discretionary power, such a discretion must be exercised not in an arbitrary, vague or fanciful manner but on judicial principles. The fundamental principle, which has been universally recognised as the true rule of guidance for the exercise of discretion to condone delays is to see whether the party claiming indulgence has been reasonably diligent in prosecuting his appeal. In the case of *State of Gujarat v. Sayed Mohd. Baquir El Edross* AIR 1981 SC 1921, the Supreme Court laid down the following principles that should govern the exercise of powers of condonation under section 5:

- (i) The party seeking relief has to satisfy the Court that he had sufficient cause for not preferring the appeal, etc., within the prescribed time. The explanation has to cover the entire period of delay.
- (ii) A litigant should not be permitted to take away a right which has accrued to his adversary by lapse of time.
- (iii) The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court under section 5. After sufficient cause is shown, the Court is to inquire whether in its discretion it should condone the delay.
- (iv) The discretion conferred on the Court is a judicial discretion and must be exercised to advance substantial justice.
- (v) No liberal view should be taken merely because the defaulting party is a government.
- (vi) Even if there was a strong case for acceptance of the appeal on merits that could not be a ground for condonation of delay.
- (vii) When there is remiss on the part of the advocate, the question that comes up for consideration is whether the mistake was bona fide or was merely a device to cover the ulterior purpose such as latches on the part of the litigant or an attempt to save limitation in an underhand way.

2.4. It was also held in an earlier decision in the case of Ramlal Motilal v. Rewa Coalfields AIR 1962 SC 361, that 'every day's delay must be explained'. Another important requirement is that the 'cause' for the delay must have arisen before the expiry of the limitation period, and, as held by the Supreme Court in the case of Ajit Singh Thakur Singh v. State of Gujarat AIR 1981 SC 733, "no event or circumstance arising after the expiry of limitation period can constitute sufficient cause".

3. We have carefully considered the facts before us and also heard the Ld. DR. We find that the assessee did not make out a reasonable case for condonation of the delay before the Ld. CIT(A) and thus the action of Ld.

CIT(A) is upheld with respect to non-condonation of delay. Accordingly, this appeal is hereby dismissed.

4. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 02.05.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 02.05.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Pramod Kumar Sahoo
2. ITO, Keonjhar Ward, Keonjhar
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches