



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No. 005 to 007/PAN/2024

Assessment Years: 2014-15, 2016-17 & 2017-18

JAP Restaurant Pvt. Ltd.

1152, Mazal Vaddo,

Opp. Lady of Health Chapel, Anjuna,

Bardez, Goa-403509

PAN: AABCJ5450B.

.....Appellant

V/s

The Asstt. Commissioner of Income Tax,

Central Circle, Panaji, Goa.

.....Respondent

Appearances

Assessee by: None

Revenue by: Mr Prabhakar Anand ['Ld. DR']

Date of conclusive Hearing : 19/08/2025

Date of Pronouncement : 21/08/2025

ORDER

PER G. D. PADMAHSHALI;

The captioned bunch of assessee's appeals filed u/s 253(1) of the Act of the Income-tax Act, 1961 ['the Act'] challenges respective separate orders passed by The Commission of Income Tax Appeals-2, Panaji Goa ['Ld. CIT(A)'] u/s 250 of the Act involving three



assessment years 2014-15, 2016-17 & 2017-18 [‘AYs’] which in turn respectively emanated out of separate orders passed u/s 153A r.w.s. 143(3)/143(3) of the Act.

2. The case was called twice; none appeared at the behest of the appellant assessee company. The order sheet entries showed that, this bunch of appeals were instituted on 08/01/2024 and with due notice these were listed for hearing first time on 10/06/2024 wherein the appellant was represented virtually by Ld. Counsel Mr S Ananthan & Smt. R Lalith, who sought adjournment for filing affidavit explaining delay of 429 days (endorsed by registry) in instituting these appeals. On such request the appeal was adjourned to 13/06/2024 wherein Ld. Senior Counsel Mr SJ Kamat appeared & due to change in representative expressed assessee’s inability to make



good shortcoming previously notified by the Revenue. The hearing by holistic consideration was further adjourned to 26/06/2024. At the scheduled hearing day also the appellant was indifferent in defaulting to comply with earlier shortcoming laying application/affidavit explaining sufficient cause behind delay filing of pending appeals, therefore the hearing was adjourned sine-die. By order sheet entry dt. 26/01/2024 the bench resumed its physical functioning and hearing in these cases with a pre-notice were re-scheduled for physical hearing on 08/01/2025. On such scheduled hearing date, the Ld. Mr SJ Kamat placed on record an affidavit dt. 08/01/2024 executed by Mr Bawmra Jap (one of the directors of assessee company) stating therein reasons of delay caused in filing these appeals u/s 253(1) of the Act. The Revenue objected the admission



of such affidavit *vis-à-vis* condonation of delay by identifying certain discrepancies in dates, overlapping & incorrect facts stated therein and being unsupported by copy of passport of deponent therefore. Considering such deficiency & for want of copy of passport of the deponent, in the larger interest of justice these cases were further adjourned 23/04/2025. In the event of effective failure on the part appellant to represent, these cases were witnessed adjournments from time to time from 23/04/2025 to 28/08/2025 then to 19/05/2025 and then to 30/06/2025. Thereafter these cases were posted for hearing today 19/08/2025 (11th hearing). On this scheduled hearing day objecting the application for adjournment, the Ld. DR Mr Prabhakar averred that, having filed these appeals belatedly the assessee company has adopted delaying



tactics, therefore in the light of rule 24 of ITAT-Rules, 1963 the hearings of these cases needs to be advanced *ex-parte* and to be decided the subject matter on the basis of material already placed on records by the appellant. It was further submitted by the Ld. DR that, the Revenue [Ex-chequer] is one of the rival parties to the present dispute and in any case indefinite or perpetual adjournments would adversely affect both party's interest, therefore these matters needs to be advanced for adjudication in the absence of appellant assessee. Recording the conduct adopted in delaying the matter without pressing & sufficient reasons, in the larger interest of justice, we deem it fit to reject the adjournment & advance *ex-parte* u/r 24 (supra) to adjudicate the limited issue of delay on the basis of submissions / materials already placed on records. Noting the same, we advanced accordingly.



3. Since facts involved in this bunch of appeals and issue dealt therein are common & identical and since arising out of a common search, on respondent revenue's request these appeals for the sake of brevity & convenience are heard together for being disposed-off by this common & consolidated order.

4. In adjudicating these matters together, the first appeal ITA No. 005/PAN/2024 is taken as lead case, resultantly our adjudication laid in succeeding paragraphs shall *mutatis-mutandis* apply to remaining appeals.

5. Without touching grounds of appeal and going into merits of the case, we have heard respondent Revenue's common submissions objecting the condonation of delay, and subject to rule 18 (supra) perused material placed on record and considered facts in the light of settled position of law.



6. We note that, the present appeal against the impugned order dt. 16/09/2022 was instituted by the appellant u/s 253(1) of the Act on 08/01/2024 [being the date on receipt of appeal by the Registry of ITAT, Panaji, Goa]. The Revenue claimed that, the impugned order dt. 16/09/2022 dismissing first appeal against the order of assessment was passed by the Ld. AO on 17/04/2021 was duly served by it on even date through (i) placing on web-portal and (ii) through registered email quoted in Form No 35 at the column 'personal information' and against Sr. No 17 'address to which notice may be sent'. The appellant on the other hand in appeal memo Form No 36 [placed on page 1 at under 'Appeal Details point 3(c)'] claimed & alleged that the impugned order was served or communicated to it on 08/12/2023 [approximately after 15 months of passing impugned order.



7. The appellant's claim admittedly remained unsupported by any evidence and further there was much less documents placed on records to prove how and when the impugned order was actually communicated after inordinate delay of 15 months of it passing. *Per contra* the Revenue produced that the copy forwarding letter by which impugned order was forwarded/communicated through registered post [EM 547006296IN dt. 19/09/2022] to the address mentioned/notified in form No 35 and submitted that there was no default or inaction on the part of the department in belated communication to the appellant assessee. It was further placed on records the copies of email communication [Pg 10-12 of paper book] showcasing the notice of hearing & as such the impugned orders were also communicated to almost on email id's available with the Revenue in relation to



the appellant company viz; on bawmra@yahoo.com,
citappeals@sjkamt.com &
aabcj5450b12052005@sjkamat.com etc. In view of
this indisputable & effective demonstrations by the
Revenue, the appellant ultimately ceased the dispute
over communication of impugned order by
submission vide **first-affidavit** executed dt.
08/01/2024 [duly notarised before 'Adv Gajanan
Korgaonkar' vide Sr. 181 on 08/01/2024] whereby
the appellant confirmed twin facts eventually that, (i)
the copy of impugned order forwarded to business
address [as notified by it in Form No 35] was not
delivered because subsequent to filing of first appeal
the said business address was shifted to new location
by and such change was never communicated to Ld.
CIT(A) and (ii) for the purpose of filing second appeals
u/s 253(1) of the Act the copies of impugned order



was downloaded by the appellant company from (<https://www.incometax.gov.in>) Income Tax e-filing web-portal which was readily made available by the Revenue upon passing the impugned order sought to be challenged. In the event the claim of the appellant that impugned order claimed to have served to it belated remained unfounded, thus devoid of facts & merits. Consequently for the purpose of computation of delay in filing the present appeal by the appellant (if any) was to be calculated from expiry of period of limitation prescribed u/s 253(3) of the Act.

8. In terms of provisions of s/s (3) of section 253 of the Act, w.e.f. 01/10/2024 every appeal u/s 253(1) or 253(2) of the Act is required to be filed *within two months from the end of the month in which order sought to be appealed is communicated to the assessee*. The present appeal as admittedly filed with



delay of 429 days [as per clause 10 placed on page 2/3 **first-affidavit** executed dt. 08/01/2024]. Thus, the present appeal since filed beyond the statutory period of two month from the end of month in which impugned order was effectively communicated to the appellant assessee, hence barred by limitation prescribed by s/s (3) of section 253 of the Act. The admission in terms of s/s (5) of section 253 of the Act of this appeal is therefore subject to satisfactorily establishing on record the presence of 'sufficient cause' behind such inordinate delay by the appellant.

9. Dilating from the '**first-affidavit** dt. 08/01/2024 [which stated the delay in filing as 429 days] and the subsequent '**second-affidavit** executed dt. 28/04/2025 & duly notarised before 'Adv Meera Medhekar' vide Sr. 2119 on 28/04/2025, [which stated the delay in filing as 479 days] the Ld. DR



sought our attention to variation in number of delay days computed and submitted that, the appellant assessee not only unserious in prosecuting the appeal but flippant & playful. Alluding to the ineffectual claims made by the appellant in former affidavits, the Ld. DR contended that, the ground that; (a) unawareness of the appellant about the outcome of the first appeal and (b) one of two directors being displaced from India hence appellant was unable to act instantly would not form sufficient cause for inordinate delay. Referring to appellant's both the affidavits Ld. DR further contended that; (a) first of all there are no reasons stated in the sworn affidavits, (b) the affidavit is merely narrative of facts (c) one displacing from India and unawareness of impugned order do not *per-se* forms reasons (d) even if they remotely considered as 'reasons', such reasons



are incapable of being ‘*sufficient reasons/cause*’ for the purpose of condonation. The Ld. DR further averred that, the affidavit when r.w. copy of passport submitted on record *prima-facie* reveals divergent facts that, as on the date of execution of affidavit the appellant was a British National and was not in India, but the appellant sworn contrarily therein claiming to be in India. Thus, the appellant executed the affidavit representing him-self incorrectly. Clapping eyes on appeal memo the Ld. DR submitted that, the appellant un-indifferently signed loci stating to be in India. *Au contraire* the appellant assessee could neither deplore the Revenue’s findings nor deprecate the factual position came to light from the submission placed on records by the appellant.

10. Now before vouching ‘sufficiency’ of reasons put forth by the appellant, it is apt to first quote core



principles on the subject which are culled out by the Hon'ble Supreme court in '*Esha Bhattacharjee Vs Managing committee of Raghunathpur Academy and Ors*' reported in [2013, 9 SCR 782 (SC)];

(a) *Lack of bonafied imputable to a party seeking condonation of delay is a significant and relevant fact;*

(b) *The concept of liberal approach has to encapsulate the **conception of reasonableness** and totally unfettered free play is not allowed;*

(c) *The **conduct, behaviour and attitude of a party** relating to its negligence cannot be given a total go-bye in the name of liberal approach.*

(d) *If the explanation offered is concocted or grounds urged in the **applications are fanciful**, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation.*

(e) *It is to be borne in mind that no one gets away with **fraud, misrepresentation or interpolation** by taking recourse to the technicalities of the law of limitation.*

(f) *An application for condonation of delay should be drafted with **careful concern and not in a haphazard manner** harbouring notion that Courts are required to condone delay on bedrock of principle that adjudication of lis on merits is seminal to justice dispensation system;*

(g) *The increasing tendency to perceive the **delay as a non-serious matter** and hence **lackadaisical propensity** can be exhibited in a nonchalant manner requires to be curbed, of course, with legal parameters.*

(Emphasis supplied)



11. In the instant case, we observed that, the appellant assessee is a company incorporated under the provisions of Companies Act, 1956 and was operating with two directors viz; (i) Mr Bawmra Jap and (ii) Mr Krishna Poojary. The appellant being a company the appeal memo and documents etc., were required to be signed by the person who was entitled/authorised to verify & signed the return of income as per the provisions of section 140 of the Act. Since company had no managing director on its board, any director of the appellant company was entitled to sign the return, thus the appeals & documents for the purpose of the Act. The director of the appellant company Mr Jap a was a British national who signed & executed the affidavits & appeal memo claiming to be in India as on such dates, however the copies of passport placed on



record as alleged by the Revenue failed to prove that, on the respective dates the signatory to the appeal memo, documents & affidavit was present in India. These photocopies being illegible therefore facts claimed by the appellant company remained unfounded for the purpose of our consideration. Insofar as the delay in instituting the present appeal is concerned, a careful contemplation of former affidavits reveals us that, there is neither any plausible explanation nor any whisper in the entire narration of facts about a single step taken by the appellant to showcase required seriousness, and not even a bonafied affirmation that delay was accidental. We also observed that, neither through such affidavits nor by any other document/petition or application the appellant assessee could demonstrate that there was a '*sufficient cause*' or '*sufficient*



reason' behind the inordinate delay which prevented it from filing the present appeal within the statutory time limit allowed u/s 253(3) of the Act. In the event the lifeline embedded under s/s (5) of section 253 of the Act could hardly come to rescue the appellant from rigors of s/s (3) (supra).

12. The true length of delay is no matter, the acceptability of explanation is the only criteria in vouching 'sufficiency of cause/reasons' as the primary function of quasi-judicial authority is to adjudicate dispute between parties to advance substantial justice. There may be inordinate delay but if supported with sufficient cause/reason, then such delay irrespective of its substantiality qualifies for condonation and vice-versa an insignificant delay unsupported by 'sufficient cause/reasons' is not pardonable.



13. So in true sense, not the number but text of explanation is determinative in the matter of condonation of delay. The Hon'ble Supreme Court vide para 15 summarized the law on delay condition in '*Basawaraj & Anr Vs Special Land Acquisition Officer*' [AIR 2014 SC 746] as;

*"15. The law on the issue can be summarized 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 tantamount to showing utter disregard to the legislature".* (Emphasis supplied)



14. It is trite law that, the burden is on the party claiming condonation of delay to place before the authority, in clear & explicit terms, all facts on which party relies, so that the appellate authority/court can come to conclusion that it is not a case of want of diligence or inaction on the part of the applicant.

15. In the instant case, admittedly, there was gross delay of 429/479 days which is inordinate having regard to provisions of s/s (3) of section 253 of the Act and is unsupported by any adequate, enough or sufficient cause/reason and further not been satisfactorily explained. The assessee on the other hand did initiate no action or vigilance for a year after the service of impugned order. The appellant company remained inactive and material placed on record did in no manner showcase that it was diligent with the pending tax litigation. *Per contra*, the



appellant has not proved any inaction or negligence on the part of a third party, much less have they pleaded any action or vigilance on their own part. Thus, in our thoughtful consideration the appellant failed to make out a case that there was sufficient cause for delay in filing the present appeal and as it remained not only negligent but nor did initiate any steps at all. We also note that, the averments made in the affidavit badly lack bonafied imputable, therefore there is much less '*sufficient cause*'. The acceptance of appellant's request would amount to granting free play. While deciding the issue we are also mindful to the conduct, behaviour, laxity attitude of the appellant and sheer negligence towards prosecution of present appeal which cannot be given a total go-bye. The much less explanation offered against inordinate delay is concocted.



16. The fanciful grounds urged in the affidavits do not in any way capable of suggesting that such gross delay was occurred under bonafied circumstances. The appellant's request smokes harbouring notion that Tribunal is required to condone delay on bedrock of principle that adjudication of appeal should in all probabilities to proceed on merits. It can very well be made out from the contents of affidavits that appellant was not at all serious *per contra* suggest lackadaisical propensity. We are mindful to state that, one of two director's displacement from India, appellant's unawareness about of pending litigation, its implication etc., are grossly sufficient to prove inaction on the part of the appellant and hence case do not entitle for the benefit of s/s (5) of section 253 of the Act, in the event the request for condonation deserves to be rejected.



17. In view of the judicial precedent (supra) we are mindful to hold that, the reasons stated & averments made in support of delay in instituting present appeal takes its colour from affidavits executed. Since the affidavits/document for the former reasons *per-se* failed to prove existence of sufficient cause, therefore all pleas made therein & grounds contended to buy home delay condonation stands rejected. As no case is made out in terms of s/s (5) (supra) in consequence present appeal in view of s/s (3) of section 253 of the Act is barred by limitation, therefore unadmitted for adjudication, and thus stands dismissed.

18. In result, all three appeals stands DISMISSED.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned hereinbefore.

-S/d-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

-S/d-
G. D. PADMAHALI
ACCOUNTANT MEMBER

Panaji/Dt: 21th August 2025.

Copy of the Order forwarded to :

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|-------------------|--------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Goa | 6. Guard File |

By Order,
Sr. Private Secretary / AR ITAT, Panaji.