

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No. 185, 198 to 201/Ran/2024

(Assessment Years-2005-06 to 2009-10)

Alok Kumar, W/S 8/94 Harmu Housing Colony, Housing Board Office Near, Ranchi-834001 (Jharkhand) PAN No. AQBPK 3846 P	Vs.	D.C.I.T., Central Circle-2, Ranchi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Adjournment Application Filed
Department represented by	Adjournment Application Filed
Date of hearing	06/10/2025
Date of pronouncement	06/10/2025

ORDER

PER: BENCH

1. These are the appeals filed by the assessee against the orders of the Id. CIT(A), Patna-3, Patna all dated 11/02/2019 for the A.Y. 2005-06 to 2009-10 respectively. As all the issues in all these appeals relate to the common issues, therefore, they are being disposed off by this common order.

2. The Id. AR has filed adjournment application mentioning as under:

"In the above referred case, the hearing has been scheduled on 06/10/2025. In this case the assessee needs to submit written submission with paper book before the Hon'ble Bench as it is the first hearing. It is therefore prayed hereby to kindly adjourn the case and provide adequate time to the assessee for written submission and paper book.

For this kind gesture the assessee shall ever pray."

3. A perusal of the file shows that a paper book and written submissions have been filed on 04/10/2025. Therefore, the reasons mentioned being inadequate, the adjournment application of the assessee stands rejected.

4. The number of cases posted during the week is nearly 250, out of the same, on daily basis, nearly in 72 to 75% of the cases, adjournments are being sought. As the Bench was constituted and the same was also intimated much in advance and the adjournment has been sought in the last minute, therefore, the adjournment applications are being rejected.
5. It may also be worthwhile to mention here that another reason given by the Id. CIT-DR for adjournment is that in some of the appeals, orders have been passed by the office of the impugned CIT-DR personally. Here, it is to be mentioned that in respect of the orders of the Id. CIT(A), which have been challenged by the revenue, it can be said that it would be difficult for the Id. CIT-Departmental Representative to defend such orders, in so far as he would be arguing against his own orders. But in such cases, where the orders have been passed against the assessee and the assessee is in appeal, we find no reason as to why the Id. CIT-DR would not be able to defend his own orders. In any case orders have been issued against the assessee. When this was put to the Id. CIT-DR, it was a submission that should the Tribunal pass an order reversing the order of Id. CIT(A), he could be questioned under administrative provisions. This does not stand to be a reason, in so far as the appeal provisions have been provided by the statute. It is human to err. If there is no order passed by the Assessing Officer, then obviously post of CIT(A) is required and if there is no order of Id. CIT(A), there is no requirement of the Tribunal so on and so forth. Various stages of appeals are provided so that necessary proceedings are available for both the assessee and the revenue to defend their stands. Decisions taken by the appellate authority as a judicial or quasi judicial

forums, are not subject to administrative reviews. Appeal provisions are provided by the statute. It would also be worthwhile to mention here that repeatedly the courts have been holding that the Id. CIT(A) are quasi judicial authorities and no administrative pressure can be put on them to decide any issues in any specific manner. We are of the view that such apprehension of the Id. CIT-DR is unfounded. Consequently, the submission of the Id. CIT-Departmental Representative was that he is recusing from the arguments. His plea is accepted. The matters are disposed off on merits on the basis of records and documents available before the Tribunal.

6. We found from perusal of record, that there is delay of 1846 days in filing all these appeals before this Tribunal, for which, the assessee has filed condonation application for condoning the delay. In the condonation application, the assessee has mentioned as under:

"The assessee previous A.R. not intimated for such reassessment order passed on 29.12.2011 /153A/144 of the Act, due to non- technical person of the firm partner unable to locate order.

When Assessment order is received thereafter search new A.R. after his appointment we comes known appeal is not file that the reason appeal is not file on due time. I pray before your honor condemn my delay. Affidavit is also enclosed.

An affidavit to the effect has already been executed and made part of this case record which narrates the factual position in justification to the delay.

In the case of AY. 2005-06) wherein there was delay of days and judicial precedents/case laws of Hon'ble Apex Court were cited and discussed and thereafter the Tribunal condoned the delay by holding as under: -

- 1. The Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072, analyzed the provisions of law qua*

limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice-that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is requires to be adopted on principle as ordinarily a litigant does not stand to benefit by lodging an appeal late. Further 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. The Apex Court further held that when substantial justice and technical considerations are pitted against each other, 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. It must be grasped that 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.

2. The Supreme Court in N. Balakrishnan v. M. Krishnamurthy 2008(228) ELT 162. While condoning the delay of 883 days intiling an application for setting aside the ex parte decree held "That the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span tor the legal remedy fir the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court 111 different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury: If the explanation given does not smack mala fides or not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor," 33 In the case of S.S.M Aimerd Husain vs ITO [2017] 85 taxman, com 351 (Madras) the assessee filed an appeal before the commissioner (Appeal) along with an application for condone nation of

delay of 175 days. The assessee claimed that delay occurred since he was waiting outcome of penalty order. The Commissioner (Appeals) however refused to condone the delay. The ITAT as later (as also confirmed h the High Court held that that the reason stated by the assessee in these cases is that he was Waiting for, the outcome of the penalty proceedings. "Therefore. One has to consider, whether reasonable prudent person would do so. The inference of such delay has to be drawn on the basis of circumstances available on record and conduct of the assessee After considering the surrounding circumstances and applying the test of human probabilities, one has to reasonably conclude that the plea of the assessee is genuine. The explanation offered by the assessee for the delay cannot be rejected as false or devoid of merits. Therefore, this shorts delay of 175 days is condoned.

3. In the case of Kiran Laxmi kant Joshi v. ITO [2004] 3 SOT 822 (AHD.), the facts were that the assessee moved an application under section 154, which was disposed of by the Assessing Officer. The appeal against the said order was filed before the Commissioner (Appeals) with a delay of more than 6 months. The assessee explained that the delay was on account of earthquake and ill health of his wife coupled with change of his address due to certain family dispute. The Commissioner (Appeals), however, rejected the explanation of the assessee on the ground that the reasons were very general in nature and did not explain specifically as to why the delay had occurred. On second appeal, ITAT held the Courts and the quasi-judicial bodies are empowered to condone the delay if a litigant satisfies the court that there were sufficient reasons for availing the remedy after expiry of the limitation. Such reasoning should be to the satisfaction of the Court. In the instant case, on account of earthquake and ill health of his wife, the assessee bad been facing many problems, simultaneously. According to him, order under section 154 was served upon him at the old address. That communication had also consumed time. Therefore, the assessee could not gain anything by filing the appeal late. There was no mala fide imputable to the assessee. The delay in filing the

appeal was the result of ill health coupled with the change of his address thrice in a short span. In every case of delay there can be some lapse of the litigant concerned. That alone is not enough to turn down the plea and to shut the doors against him. If the explanation does not smack of mala fide or it is not put-forth as a part of dilatory strategy, the Courts must show utmost consideration to such litigant. At the most for the inaction or a little negligence, the assessee could be burdened with the cost. But his right of bearing of the appeal on merit ought not to be shut. Therefore, the delay in filing the appeal before the Commissioner (Appeals) was condoned and the matter restored to the first appellate authority to decide the appeal on merit.

In the case of Rameshhhai V. Prajapati v. DCIT [2021] 127 taxmann.com 674 (Ahmedabad-Trib) the Ahmedabad ITAT held that where Previous tax consultant of assessee had not attended tax-matter satisfactorily and new tax consultant had obtained various documents, and health caused delay in filing Miscellaneous Application that these circumstances and his against ex parte order passed on account of non-prosecution, Keeping in view of rule 24 of Income-tax Appellate Tribunal, 1963, delay in filling Miscellaneous Application was to be Condoned.

In the case of Kashmir Road Lines v DCIT 2021] 123taxmann.com 5 (Amritsar-Trib)

ITAT held that where assessee, claimed condonation of Delay of 124 days in filling appeal due to reason that appeal papers Were prepared and handed over to Assistant assessee's counsel for filling who failed to do so and ultimately appeal was filed belatedly through another local counsel and such contention was also supported by affidavit of previous counsel, since assessee had demonstrated bona fide reason and sufficient cause for such delay, same was to be condoned"

Respectfully following the judicial precedents laid by Hon'ble Supreme Court cited be Tribunal in Shri Pankaj Hiralal Marethi (supra) and taking note of the cause for the delay in filing appeal before this Tribunal. I am inclined to condone the delay and note that

Recent Appeal is allowed in the case of Access Diamonds Pvt. Ltd. Vs DCII. Central Circle-7(1), 17.A. No. 600/Mum/2023. Court held:

The delay caused in filing of appeal cannot be attributed to any lapse on the part of assessee, and assessee should not suffer for the omission on the part of the LA, AR as discussed supra. Therefore taking into consideration the contents of the sworn affidavit of the assessee's director and reason for delay as discussed supra as well as the issue of double taxation. Brought to my notice, the delay caused in filing of Appeal is condoned in the interest of justice.

The appeal documents were prepared and handed over to previous A/R for filling but he failed to do so and ultimately appeal was filed belatedly through new counsel such contention was also supported by affidavit. Therefore, sufficient causes for such delay is to be Condon request to by the assessee before your honors."

7. We have considered the contentions made in the condonation application and found that there is plausible reason for condoning the delay, therefore, we condone the delay in filing of all these appeals before this Tribunal.
8. We have considered the facts and we have also perused the orders of the lower authorities. A perusal of the order of the Id. CIT(A) in the impugned case shows that the Id. CIT(A) has recorded in his order that multiple opportunities had been given to the assessee right from 2013 to 01/11/2018 and the assessee has not chosen to comply with the notices issued to the assessee. As it is noticed that the assessee has not responded to the notices, the Id. CIT(A) has confirmed the order of the Assessing Officer in absence of any evidences produced. Considering the facts of the case and the written submissions filed by the assessee, we are of the view that the assessee must be granted another opportunity to represent his case before the Id. CIT(A). In the circumstances,

we restore the issues in the appeals back to the file of Id. CIT(A) for readjudication after granting the assessee adequate opportunity of being heard.

9. In the result, all the appeals of assessee are partly allowed for statistical purposes.

Order announced in open court on 06/10/2025.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Ranchi, Dated: 06/10/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi