आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G. ACCOUNTANT MEMBER

आ.अपी.सं /**ITA No.1053/Hyd/2025**
Assessment Year 2021-2022

Kakinada Infrastructure Holdings Private Limited, Hyderabad – 500 034. PAN AACCK8577H	vs.	The DCIT, Circle-2(1), Hyderabad – 500 004. Telangana.
(Appellant)		(Respondent)
निर्धारिती द्वारा /Assessee by:	Shri Naresh Jain, Advocate And CA MV Prasad	
राजस्व द्वारा /Revenue by:	MS Reema Yadav, Sr. AR	

सुनवाई की तारीख/Date of hearing:	10.12.2025
घोषणा की तारीख/Pronouncement:	21.01.2026

आदेश/ORDER

PER VIJAY PAL RAO, VICE PRESIDENT :

This appeal by the Assessee is directed against the Order dated 16.11.2023 of the learned CIT(A)-National Faceless Appeal Centre [in short "NFAC], Delhi, for the assessment year 2021-2022.

2. At the outset, there is a delay of 506 days in filing the present appeal before the Tribunal. The assessee has filed an application for condonation of delay which is supported by the affidavit of the Managing Director of the assessee company. The learned Authorised Representative of the Assessee has submitted that the impugned order was passed by the learned CIT(A) on 16.11.2023 whereby a major relief was granted to the assessee against the additions made by the Assessing Officer. Therefore, the assessee was under the bonafide belief that no further action would be taken by the Assessing Officer and to buy peace did not prefer any appeal at the initial stage. However, to the shock and surprise of the assessee, the Assessing Officer passed the penalty order under section 270A of the Income Tax Act **[**in short "the Act"**]**, 1961 and levied the penalty of Rs.9.55 crores on account of disallowance of business loss and advertisement expenses. The learned Authorised Representative of the Assessee has submitted that in the quantum appeal the learned CIT(A) has already deleted the addition made by the Assessing Officer on disallowance of business loss and, therefore, the penalty

levied against the said addition is not sustainable. However, the assessee was under the imminent risk of the prosecution to be initiated by the Assessing Officer in pursuance to the penalty order passed under section 270A of the Act. Thus, the assessee has consulted its Counsel on this issue who has advised the assessee to file an appeal against the impugned order passed by the CIT(A) in the quantum appeal before the Tribunal. The learned Authorised Representative of the Assessee has thus submitted that the assessee based on the advice of the Counsel has filed the present appeal, however, which is belated as there is a delay of 506 days in filing the present appeal. The learned Authorised Representative of the Assessee has further submitted that the levy of penalty by the Assessing Officer was a triggering point for taking a decision by the assessee to challenge the impugned order passed by the learned CIT(A) sustaining the addition on account of disallowance of advertisement expenses. Therefore, this is not a case of negligence or deliberate/intentional act of delay in filing the appeal, but the assessee wanted to put an end to the litigation at the stage of the CIT(A) so that no further

litigation shall be faced and to buy the peace. Only when the Assessing Officer has levied the penalty under section 270A of the Act in the facts and circumstances of the case created by levy of penalty has filed the present appeal to avoid risk of facing other litigation and prosecution by the department. In support of his contention, he has relied upon the decision of Chennai Benches of the Tribunal in the case of **S.S.M. Ahmed Hussain vs. ITO [2016] 48 ITR 417 (Chennai.Trib.)** as well as the decision of Jaipur Bench of the Tribunal in the case of **Shri Laxman Nainani vs. DCIT [2020] 80 ITR 1 (Jaipur.Trib.)**. The learned Authorised Representative of the Assessee has thus submitted that the assessee has taken a diligent decision to seek the advice of its Counsel from time to time and after the new development of levy of penalty by the Assessing Officer, the Counsel of the Assessee advised to challenge the Order of the learned CIT(A). Therefore, the assessee was not guilty of negligence or inaction but has exercised due care and attention about tax matters. It is only due to the subsequent development of levy of penalty and risk

of prosecution, the assessee decided to challenge the impugned order. The learned Authorised Representative of the Assessee has further submitted that the Assessing Officer has made disallowance of advertisement expenses on the ground of personal in nature, whereas in the case of the Company a corporate body, no disallowance can be made on the ground of personal nature, as all the expenses are incurred for the purpose of business of the assessee company. Thus, to avoid the penalty as well as subsequent prosecution, the assessee has filed the present appeal which is to be decided on merits instead of dismissing on technical grounds of delay. In support of his contention, he relied upon the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC).

3. On the other hand, the learned DR has vehemently opposed to the condonation of delay and submitted that the assessee has not explained any reasonable cause for the delay of 506 days in filing the present appeal. The reasons explained by the assessee that due to levy of penalty by the

Assessing Officer, the assessee decided to file the present appeal is not a reasonable cause, much less sufficient cause for the delay in filing the appeal. The learned DR has further submitted that levy of penalty is consequential to the addition conformed by the learned CIT(A) and, therefore, the action of the Assessing Officer taken as per the provisions of the Act cannot be considered a reason for delay in filing the appeal.

4. We have considered the rival submissions as well as relevant material on record. The assessee has explained the delay of 506 days in filing the present appeal that the assessee has got a substantial relief by the impugned order of the learned CIT(A) and, therefore, the assessee to buy peace and to put an end to the litigation initially not filed any appeal against the impugned order of the CIT(A). Only when the Assessing Officer has levied the penalty vide order dated 07.03.2025, the assessee has taken steps for further course of action and in the said process the assessee consulted its Counsel who after going through entire matter advised the assessee to file an appeal before the Tribunal against the quantum order passed by the learned CIT(A). Accordingly, the

assessee filed the present appeal on 20.06.2025. Thus, the assessee has acted as per the advice of the Counsel to initially decided to put an ended to the litigation and after the penalty order passed by the Assessing Officer under section 270A of the Act whereby a penalty of Rs.9.55 crores was levied, the assessee again consulted it's Counsel who has advised to challenge the quantum order passed by the learned CIT(A) and thus, the assessee has approached the Tribunal by filing the present appeal with a delay of 506 days. It is a matter of record that the present appeal has been filed by the assessee only after the penalty levied by the Assessing Officer under section 270A of the Act and, therefore, the reasons explained by the assessee are factually not disputed because the decision to file the appeal has been taken only after the penalty order passed by the Assessing Officer. The Assessee has explained the reasons for delay that only after the levy of penalty, the assessee has an imminent risk of facing the prosecution and, therefore, the legal remedy available with the assessee to avoid of the punitive action is to file the present appeal challenging the impugned order of the learned

CIT(A). The reasons explained by the assessee do not indicate any malafide or deliberate delay in filing the appeal to take an undue advantage by filing the appeal belatedly. It is settled proposition of law that the Court should take a lenient view in construing the **'**reasonable and sufficient cause**'** for the delay in approaching the Court. It is always a question whether the reasons for the delay are bonafide or it is a mere device to cover the ulterior purpose such as an attempt to save the limitation in underhand way. If the reasons explained by the assessee show that it has acted bonafidely and no attempt was made to take the advantage of filing the appeal belatedly, then the Court's should take a liberal view while considering the **'**sufficient cause**'** and should lean in favour of the litigant who approach the Court belatedly. It is pertinent to note that when no outstanding tax demand against the assessee, then taking an undue advantage by filing the appeal belatedly is ruled out. It is also settled proposition of law that whenever the substantial justice and technical considerations are pitted against each other, the cause of substantial justice has to be preferred and justice

oriented approach has to be taken while deciding the matter for condonation of delay as held by the Hon'ble Supreme Court in the case of **Collector, Land Acquisition vs. MST Katiji** (supra). In the case in hand, the Assessing Officer made the addition *inter alia,* additions on account of advertisement expenses on the ground of personal in nature which was sustained by the CIT(A) while passing the impugned order. However, as per the various binding precedents of Hon'ble High Courts and Hon'ble Supreme Court, a claim of expenditure of a Company cannot be disallowed on the ground of personal nature. Thus, the issue raised by the assessee in respect of disallowance of the advertisement expenditure on the ground of personal in nature needs to be decided on merits. The Chennai bench of the Tribunal in the case of **S.S.M. Ahmed Hussain vs. ITO [2016] 48 ITR 417 (Chennai.Trib.)** has considered the cause of delay in filing the appeal in para 7 as under:

> *"7. We have heard both the parties and perused the material on record. In this case, the delay before the Commissioner of Income-tax(Appeals) is only 175 days in filing the appeals. The assessee filed condonation petition as narrated in earlier para. The reasons*

stated by the assessee is that he has bona fide belief that the Assessing Officer would not levy penalty and close the issue. However, for his surprise, the Assessing Officer initiated penalty proceedings vide order dated 8.3.2014. The assessee requested the Assessing Officer on several occasions not to levy penalty and the assessee filed revised return of income on the basis of mutual understanding between the department and arrived at during the search conducted and there was certain lapses on the part of the assessee like filing of original return due to lack of professional advise. Further, it was stated that the assessee has already paid capital gains before filing the return of income. However, the Assessing Officer finalized the penalty order and it came to the notice of the assessee on the last day of hearing of penalty proceedings on 25.9.2014 that the AD is going to levy penalty u/s.271(1)(c) of the Act in these assessment years. Hence, the assessee filed appeals against the quantum addition before the Commissioner of Income-tax(Appeals) on 26.9.2014. As per the Commissioner of Income-tax(Appeals), this cannot be a reasonable cause to file the appeals belatedly and the assessee cannot wait for the result of penalty proceedings in filing the appeal. This observation of the Commissioner of Income-tax(Appeals) is unwarranted. Thus, in our opinion, there is superficial approach to the problem by the CIT(Appeals). The matter has to be considered in the light of human probabilities. The reason stated by the assessee in these cases is that he was waiting for the outcome of the penalty proceedings. Therefore, we have 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. As held by the Madras High Court in the case of Sreenivas Charitable Trust v. Dy. CIT [2006] 280 ITR 357/ 154 Taxman 377, the expression "sufficient cause should be interpreted to advance substantial Justice. Therefore, advancement of substantial justice is the prime factor while considering the reason for condoning the delay. In these cases, the issue on merit is with regard to allowability of exemption u/s.54B of the Act. The assessee took a plea that sale consideration was given to Mis. Alpha Commercials, wherein one of the co-partners of the property is a partner of that firm for the purpose of investment in agricultural land so as to avail deduction us.54B of the Act. Refusal to condone the delay would result in a meritorious being thrown at the very threshold, cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a case would be decided on merit after hearing the parties. On this point, it is pertinent to draw the ratio laid down by the Supreme Court in the case of Collector Land Acquisition v. Mstt. Korigi [1987] 167 ITR 471, wherein it was held as under:

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 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 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.*

7.1. In our opinion, when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. In our opinion, the delay in this case is very short i.e. 175 days and there is no question of inordinate delay, when the reason stated by the assessee was a reasonable cause for not filing the appeal. We have gone through the reason for delay as discussed in earlier para. The Madras High Court in the case of CIT v. K.S.P.Shanmugavel Nadar [1985] 153 ITR 596/[1987] 30 Taxman 133 considered the delay of condonation and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Accordingly, the Madras High Court condoned nearly 21 years of delay in filing the appeal. When compared to 21 years of delay considered by the Court, the delay of 175 days before the CIT(Appeals) in filing the appeal cannot be considered to be inordinate or excessive.

7.2. Further, the co-ordinate Bench of the Tribunal, Chennai in the case of People Education and Economic Development Society (PEEDS) v. ITO [2005] 100 ITD 87 (TM) condoned the delay of more than 600 days, wherein, the Accountant Member was a party(dissented). Thus, as held by the Madras High Court in the case of Srinivas Charitable Trust cited supra, there was no hard and fast rule can be laid down in the matter of condonation of delay and courts should adopt a pragmatic approach and the courts should exercise their discretion on the facts of the each case keeping in mind that in construing, the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this judgment of the Madras High Court says that in order to advance substantial justice, which is of prime important, the expression "sufficient cause" should receive a liberal construction. In these cases, in our opinion, the short delay of 175 days is on account of bona fide belief by the assessee that the AO should not levy penalty and the assessee was waiting for the dropping of penalty during this period and when the assessee came to know on 25.9.2014 that the AO is going to confirm levy of penalty, immediately on 26.9.2014 the assessee filed appeals before the CIT(Appeals) challenging the addition. Hence, in our opinion, when delay is for short period of 175 days, it is to be condoned as held by the Supreme Court in the case of Mrs. Sandhya Rani Sorkar v. Smt. Sudha Rani Debi AIR 1978 SC 537 since the condonation of delay is the discretion of this court and it would depend on each case. In our opinion, when there is sufficient cause for not filing the appeal within the period of limitation, the delay has to be condoned and if we do not condone the delay, it would amount to legalise an illegal order and it is appropriate to exercise the power with the intention that this Tribunal would deliver justice rather

than legalise injustice on technicalities, Therefore, this short delay of 175 days is condoned."

4.1. Thus, it was held by the Tribunal that filing the appeal after the outcome of the penalty proceedings is what a reasonable prudent person would do. The reasons explained by the assessee are to be considered on the basis of the surrounding circumstances and conduct of the assessee and not to be confined only to the levy of penalty itself. If the surrounding circumstances and the human probabilities leads to a reasonable conclusion that the assessee has explained the reasons which are bonafide and genuine, then the explanation offered by assessee for the delay cannot be rejected. The Jaipur Bench of the Tribunal in the case of **Shri Laxman Nainani vs. DCIT [2020] 80 ITR 1 (Jaipur.Trib.)** also considered the issue of condonation of delay in Paras-13 to 20 as under:

"13. We have heard the rival contentions and perused the material available on record. There is no dispute that there has been a delay in filing the present appeals by 583 days. There is also no dispute that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation where it is satisfied that there was sufficient cause for not presenting the

appeal within the prescribed time. The explanation of the assessee therefore becomes relevant to determine whether the same reflects sufficient cause on his part in not presenting the present appeals within the prescribed time. In the instant case, the assessee has explained that against the levy of penalty by the Assessing officer, he had pursued the matter before the Id CIT(A) wherein he didn't got any relief and thereafter, based on advice of his legal Counsel, he didn't pursue the matter any further and didn't file further appeal before the Tribunal. He was therefore of the belief that these matters have attained finality where he has paid the necessary taxes, interest and penalty. However, subsequently, he was issued a show-cause by the Id. PCIT for initiation of prosecution proceedings u/s 276C(1) for willful attempt to evade tax. Again, he consulted his legal Counsel and he was advised that there is no legal basis for launch of prosecution against him where he has all along cooperated with the Revenue authorities and has paid the due taxes and interest. At the same time, to safeguard his interest, he was advised to file his written submissions and accordingly, he responded to the show-cause issued by the id PCIT and filed written submissions vide letter dated 16,10,2017 against launch of prosecution proceedings.

Thereafter, there was no communication or action from the Department and the assessee assumed that the matter has reached a closure.

However, in the month of July 2019, the Id Counsel got to hear that the Department has decided to launch the prosecution proceedings uls 276C(1) r/w section 277 before the Economic Offences Court, Jaipur,

On receipt of such information, the assessee again consulted with his local Counsel and another Counsel based in Jaipur and it was advised by the Counsel based in Jaipur that the

assessee should immediately file appeal before the Tribunal against the levy of penalty. We therefore find that the assessee is all along diligent in pursuing his legal remedies against the action taken by the Department and has sought advice from his legal Counsels from time to time. Basis the advice of his legal Counsel, he didn't pursue any further appeal before the Tribunal against the order of the Id CIT(A) confirming the levy of penalty by the Assessing officer. However, given the subsequent developments wherein the prosecution proceedings were launched by the Department and the matter was pursued with the Department for dropping the prosecution proceedings and finally, when he came to know that the Department had decided to launch the prosecution proceedings, he again consulted another Counsel and he was advised to file appeal before the Tribunal against the levy of penalty. Such an advice is based on the premise that the Department has decided to launch the prosecution proceedings apparently for the reason that penalty has been confirmed by the id CIT(A) and there are no further appeals pending against such levy of penalty and it is therefore advisable to file appeal against such penalty before the Tribunal. The Hon'ble Supreme Court, in G. L. Didwania v. ITO (1995) 224 ITR 687 (SC), has held that "The Criminal Court no doubt has to give due regard to the result of any proceedings under the Att having bearing on the question in issue and in an appropriate case, it may drop the proceedings in the light of an order passed under the Act." In K. C. Builder v. ACIT (2004) 265 ITR 562 (SC), the Hon'ble Supreme Court held that when the penalty is cancelled, the prosecution for an offence uls 2760 for wilful evasion of tax cannot be proceeded with thereafter. Following this legal proposition, the Hon'ble Bombay High Court, in case of Shashichand Jain & Ons. v UOI (1995) 213 ITR 184 (Bom), has quashed prosecution proceedings on the basis of the

cancellation of penalty by the Appellate Authority. We therefore find that there is a close connection between penalty and prosecution proceedings and therefore, to safeguard his interest in the prosecution proceedings, where the assessee has filed the present appeals, the assessee cannot be denied and deprived of his legal defence and pleadings which he can take in the course of the prosecution proceedings. The contesting of penalty on merits of the case has therefore seems critical in view of the subsequent development in terms of launch of the prosecution proceedings and where the assessee wants to plead against risk of prosecution, the Tribunal cannot be oblivious of its duty by denying such right to the assessee on mere technicality of delay in filing the present appeals against levy of penalty.

14. In case of Collector, Land Acquisition vs MST Katiji (Supra), the Hon'ble Supreme Court has held that the expression "Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts.

It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that 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. Another principle laid down by the Hon'ble Supreme Court is that 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 nondeliberate delay. It was also held by the Hon'ble Supreme

Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that the assessee has all along acted diligently in safeguarding his legal rights and availing the remedies available to him and has acted and taken action basis the advice and assistance sought from his legal Counsels. He was initially advised not to file any appeal against the confirmation of levy of penalty. However, due to subsequent developments wherein the assessee runs a serious risk of prosecution where the penalty is confirmed, he was advised to file the present appeals, we find that there is no culpable negligence or malafide on the part of the assessee in delayed filling of the present appeals and he does not stand to benefit by resorting to such delay.

15. In case of United Christmas Celebration Committee Charitable Trust vs. ITO (Supra), the Hon'ble Madras High Court has condoned the delay of 1631 days in filing the appeal before the Tribunal against the order of id. CIT(A) refusing registration u/s 12AA of the Act. In that case, the Hon'ble High Court has held that in dealing with the matter, not only the period of delay has to be taken into account but also the quality of the explanation, the legal assistance, if any, sought and rendered to the litigant, and the detriment that condonation of delay would cause to the opposing party. These are aspects, if, looked at, closely, will enable the Court to come to a conclusion as to whether the delay was intentional and/or deliberate. Accordingly, the Hon'ble High Court held that even though the period of delay is large, it is Inclined to condone the delay especially in the circumstances of the present case for the reason that if the assessee would succeed on merits, it could hardly be said that it would cause detriment to the Revenue in the

matter involving grant of registration. In the present case, we find that where the assessee pursued the matter for closure of prosecution proceedings right from October 2017 and thereafter, the Department finally decided to refer to the matter to the economic offences Court in July 2019, and in order to safeguard himself from risk of such prosecution, he decided to file the present appeals in August 2019, there is sufficient cause for the delay as the assessee all along from 2017 to 2019 carried the belief and understanding that the matter shall attain finality in view of no further communication from the Department. However, when he came to know in July 2019 that the Department has finally decided to carry the matter further before the Economic offences Court, he filed the present appeals to safeguard himself from risk of prosecution, we find that the delay is not intentional or deliberate and where the delay is not condoned, it would not be in interest of substantial justice as it would deprive the assessee of his legal safeguard against risk of prosecution.

16. Further, we refer to the decision of Hon'ble Madras High Court in case of Hosanna Ministries vs. ITO (Supra) wherein the Hon'ble High Court has condoned the delay of 1902 days in filing the appeal against the id. CIT(A)'s order refusing the grant of registration u/s 12AA of the Act. In that case, the Hon'ble High Court has held that no doubt, the delay has to be explained with proper reasons but it does not mean that every day's delay must be explained. The Court must take a pragmatic view in appreciating the reasons attributable to the delay caused to the party to approach the Court of law and no pedantic view or approach to be adopted by the Court in considering the reasons given by the parties for delay in approaching the Court.

17. Further, we refer to the decision of Hon'ble Gujarat High Court in case of Mukesh Jesangbhai Patel vs. ITO (Supra) wherein the Hon'ble High Court has condoned the delay of over 600 days in filing the appeal. In that case, the Hon'ble High Court has drawn reference to the decision of Hon'ble Supreme Court in case of N. Balakrishna vs. M. Krishnamuthy [1998] 7 SCC 123 wherein it was held as under:-

> *"6. "In N. Balakrishna (supra), it was reiterated that the word 'sufficient cause' should receive liberal construction and acceptability of the explanation is the criteria, and not the length of delay as such by observing as under:*
>
> > *"In every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

18. Further, we refer to the decision the Hon'ble Bombay High Court in case of Vijay Vishin Meghani vs. DCIT (Supra) wherein it has referred to the decision in case of Concord of India

Insurance Co. Ltd. Vs. Smt. Nirmala Devi & Ors. AIR 1979 SC 1666 wherein the Hon'ble Supreme Court has held that a legal advice tendered by a professional and the litigant acting upon it one way or the other could be a sufficient cause to seek condonation of delay and coupled with the other circumstances and factors for applying liberal principles and then said delay can be condoned. Eventually, an overall view in the larger interest of justice has to be taken. None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate finds that the litigant has deliberately and intentionally delayed filing of the appeal, that he is careless, negligent and his conduct is lacking in bona fides. The Hon'ble High Court thereby condoned the delay of 2984 days in filing the appeals holding that the explanation placed on affidavit was not contested nor we find that from such explanation, can we arrived at the conclusion the assessee was at fault, he intentionally and deliberately delayed the matter and has no bona fide or reasonable explanation for the delay in filing the proceedings and the position is quite otherwise.

19. Further, we refer to the decision of Co-ordinate Jaipur Bench decision in case of Ganesh Chawala vs. ITO (supra) wherein the Coordinate Bench has condoned the delay of about 43 months in filing the appeal wherein under similar circumstances, the assessee ran a risk of prosecution and the relevant findings of the Coordinate Bench reads as under:-

> *"2. We have heard the rival contentions and perused the facts of the case. The tax due in the impugned case after the order of learned CIT(A) has been stated to be less than 1 lac and the seriousness has not been anticipated by the assessee and it was advised by the counsel that the tax should be paid to bring the litigation to an end. The taxes were not paid and the penalty under s. 271(1)(c) was*

imposed and the learned CIT has launched a prosecution under s. 276(1) r/w s. 277 of the Act before the Economic Offence Court. It has been stated that no opportunity had been given to the assessee before serving the order under s. 279 of the Act on 19th March, 2007. The assessee was not aware of this fact before the said service. Thereafter on the advise of the counsel, the matter against the prosecution was taken up before the jurisdictional High Court and the impugned appeal was filed before the Tribunal. Therefore, there appears to be a sufficient cause in filing the appeal before us. No presumption can be made that the delay has been occasioned deliberately or on account of culpable negligence or on account of mala fides.

The litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In our view the assessee has explained the delay of filing the appeal before us. Our views find support from the decision of Hon'ble Supreme Court of India in the case of Collector, Land Acquisition vs. Mst. Katijl & Ors. (1987) 62 CTR (Syn) (SC) 23: (1987) 167 ITR 471 (SC)."

20. In light of above discussions and in the entirety of facts and circumstances of the case, we are of the considered view that the assessee in his averments has made out a clear case that there was sufficient cause which being beyond the control of the assessee, prevented him from filing the appeals in time before the Tribunal. The assessee was diligent and has sought advice from his counsel from time to time and was not guilty of negligence on his part and it cannot be said that the delay was due to the negligence and inaction on the part of the assessee, which could have been avoided by the assessee if he had exercised due care and attention. Due to subsequent developments wherein the

assessee runs a serious risk of prosecution where the penalty is confirmed, he was advised to file the present appeals, we find that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeals and he does not stand to benefit by resorting to such delay. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay of 583 days in filing the present appeals and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred. Therefore, in exercise of powers under section 253(5) of the Act, we hereby condone the delay of 583 days in filing the present appeals as we are satisfied that there was sufficient cause for not presenting the appeals within the prescribed time and the appeals are hereby admitted for adjudication on merits."

4.2. Therefore, the Tribunal has considered the explanation of the assessee as 'sufficient cause' to prevent the assessee from filing the appeal in-time as the assessee has acted as per the legal advice tendered by the professional which can be one way or the other could be a 'sufficient cause' to seek condonation of delay coupled with the other circumstances and factors for applying the liberal principle. Thus, in the facts and circumstances of the case and taking an overall view, we are satisfied that the assessee should not be deprived of adjudication of its appeal on merits as nothing

is found to show that the assessee has deliberately and intentionally delayed in filing the appeal. Accordingly, in the facts and circumstances of the case as well as in view of various case laws relied upon by the assessee, we are satisfied that the assessee has explained the **'**sufficient cause**'** for delay in filing the appeal before the Tribunal and hence, the delay of 506 days in filling the appeal is condoned.

5. The assessee has raised the following grounds of appeal:

1. *"The learned Commissioner of Income Tax (Appeals) erred in law and facts in upholding the disallowance of ₹15,30,650 incurred towards advertisement expenditure, overlooking the business expediency and commercial rationale behind the same.*
2. *The learned lower authorities failed to appreciate that the said expenditure was incurred wholly and exclusively for the purposes of business and is allowable under Section 37(1) of the Act.*
3. *The learned CIT(A) erred in treating the expenditure as personal in nature, without appreciating that a company cannot incur personal expenditure and that the distribution of books containing the appellant's advertisement amounts to brand promotion.*
4. *The authorities failed to examine the nature of the books, the fact that they carried the company's promotional content, and that no income from devotional activity was ever claimed or intended.*

5. *The disallowance is arbitrary, unreasonable, and contrary to the settled principles laid down by various judicial precedents including:*

   -CIT v. Sundaram Finance Ltd. [154 ITR 564 (Mad))
   -CIT v. Century Spinning and Mfg. Co. Ltd. [189 ITR 660 (Bom)]

6. *The appellant craves leave to add, alter, amend or withdraw any ground at the time of hearing."*

6. In the original grounds of appeal, the assessee has a raised a solitary issue of disallowance made by the Assessing Officer and confirmed by the learned CIT(A) on account of advertisement expenditure. The learned Authorised Representative of the Assessee has submitted that the assessee company is engaged in investment activities including holding and promoting general advice and providing financial assistance. For the year under consideration, the assessee company has filed its return of income declaring total income of Rs.213.36 crores. In the scrutiny assessment, the Assessing Officer disallowed a sum of Rs.15,30,650/- claimed as advertisement expenditure treating the same as personal in nature and not incurred wholly and exclusively for the purpose of business. The learned Authorised Representative of the Assessee has

contended that the expenditure pertains to the procurement and distribution of the books from M/s. Rachana Television Private Limited which includes the advertisement of the assessee company displaying its name, logo and business information with a view to promoting the brand and attracting new business. The said disallowance was confirmed by the learned CIT(A) by holding that assessee has not substantiated the direct nexus of the said expenditure with his business activity. The learned Authorised Representative of the Assessee has contended that the expenditure incurred by the assessee towards advertising expenses cannot be considered as personal in nature. It is settled principle that there cannot be any personal expenses for a company. The expenditure in question has been incurred on the advertisement in the book as the assessee has sponsored the activities and distributed them. Therefore, merely because the book contains some religious are spiritual contents would not change the nature of expenditure incurred by the assessee being advertising through these books by way of the promotion of the assesses name and

business as printed on this book. Thus, the ingredients for claiming such expenditure as laid u/sec.37(1) of the Act are satisfied. The learned Authorised Representative of the Assessee has further submitted that for allowing the claim of expenditure it is not necessary that it has direct nexus of yielding any income as the advertisement is only for promotion and marketing of the company and not a direct income earning activity. The learned Authorised Representative of the Assessee has relied upon the judgement of Hon'ble Bombay High Court in the case of **Century Spg. & Mfg. Co. Ltd., vs. CIT [1991] 189 ITR 660 (Bom.)** as well as decision in the case of Hon'ble Madras High Court in the case of **CIT vs. Sundaram Finance (P.) Ltd., [1985] 154 ITR 564 (Mad.)**. Thus, the learned Authorised Representative of the Assessee has submitted that the disallowance made by the Assessing Officer and confirmed by the learned CIT(A) is not justified as the books though are devotional, but they contain the advertisement of the assessee company. Therefore, the expenditure incurred on the advertisement has no connection with spiritual or devotional activity and

therefore, the said expenditure is an allowable claim as incurred wholly and exclusively for the purpose of business.

7. On the other hand, the learned DR has submitted that the assessee has claimed the advertisement expenditure for distribution of devotional books which was rightly disallowed by the Assessing Officer as not pertaining to the business of the assessee. The assessee has failed to prove that how this advertisement expenditure is going to promote the business of the assessee as the expenditure in question was towards distribution of devotional books and not towards any marketing or promotion of the assessee business. The learned DR has further submitted that there is no matching income earned by the assessee from any devotional activity or related activity. Therefore, the assessee failed to prove that the expenditure has been incurred wholly and exclusively for the purpose of business. He has relied upon the orders of the authorities below.

8. We have considered the rival submissions as well as relevant material on record. During the course of assessment proceedings, the Assessing Officer has issued a

show cause notice regarding the claim of advertisement expenses of Rs.15,30,650/-. In response to that the assessee has filed its reply as reproduced by the Assessing Officer at para no.3.1.3 as under:

> ***"Reply to point no 3.1: Expenditure on advertisement:***
>
> *As mentioned above the Company is into the business of investment, buying, selling of shares. securities and also lending of monies to Companies.*
>
> *The activity falls under the business income and chargeable to tax depending upon the income earned in the respective financial year under specified heads of income.*
>
> *The ultimate objective of the company is to earn sufficient return on investments. The company has spent an amount of Rs. 15,30.650/- towards sponsoring a program-printing of books for distribution to the eminent people during a spiritual concert. The NFAC assessment unit in its show cause letter cited above after considering our earlier reply has observed that the expenditure has no connection with the business of the company. The company has purchased the devotional books and distributed to its customers to spread spiritual and religious content along with company leaflet, in this regard it is to humbly submit that the books distributed contain the details of the company and its business activity, which would be creating an awareness in the business community who get such books, about the Company and likely to procure business.*
>
> *May be because this aspect was not mentioned in the earlier submission, it is misconstrued as not connecting to business. We are submitting confirmation from the said Rachna TV. It may also be submitted that TDS was made treating the same as*

advertisement. This is akin to giving advertisement to souvenirs published by organizations. The observation that TDS is not made is not correct and to demonstrate that TOS is made copy of the TDS return is enclosed for your record."

8.1. Thus, it is explained by the assessee that the said expenditure was incurred for sponsoring a programme; printing of books for the distribution to the eminent people during the spiritual concert. The Assessing Officer has not disputed that the assessee's advertising was duly appearing in the said book as a sponsor. In support of the claim, the assessee has filed the invoice issued by M/s. Rachna Television Private Limited which is also reproduced by the Assessing Officer in the assessment order. The Assessing Officer has given the finding while disallowing the claim of the assessee that the assessee had neither performed any devotional activity nor it show any income from such activity. In our considered view, this approach of the Assessing Officer is highly misconceived as the sole purpose of the assessee for incurring the expenditure is marketing, promotion and advertisement of the assessee company through these devotional books distributed amongst the eminent

personalities during the spiritual concert organized by the said TV company. The CIT(A) has also given similar reasoning while upholding the disallowance made by the Assessing Officer in Para-8 and 8.1 of the impugned order as under:

> *"8. Ground no.2 is relating to disallowance of advertising expenses of Rs.15,30,650/-The appellant has claimed payment Rs.15,30,650/- as advertisement expenditure being made to Rachna Television Pvt. Ltd. towards procurement of devotional books which are distibuted as an advertisement material. It is claimed that the name of the appellant company and its activities are mentioned in the said books. The AO held that the appellant's major income is from dividend which is out of investments made in various companies. Further, the devotional books claimed to be distributed by the appellant do not have any connection with the business activity of the appellant. The AD has observed that the expenditure in question was towards distribution of devotional books as seen from the invoice and the said expenditure is not towards the advertisement as claimed.*
>
> *8.1. I have gone through the details of invoices reproduced by the AD on page no.9 & 10 of the assessment order. I agree with the contentions of the AO that there is no matching income earned by the appellant from any devotional activity or related activity. The appellant has not been able to substantiate as to how the distribution of devotional books have helped its business activity. To allow any business expenditure, it has to be spent wholly and exclusively for the purposes of business. This aspect has not been satisfactorily proved by the appellant. Therefore, the disallowance*

of such expenditure amounting to Rs.15,30,650/-made by the AO is upheld. Ground no.2 is dismissed."

8.2. Therefore, the main thrust of the Assessing Officer as well as learned CIT(A) is that the assessee is not in the activity of devotional/spiritual and also not earned any income by these devotional related activities, whereas the advertisement through devotional book is not for the purpose of earning the income from the said activity itself but it is only for the promotion and advertisement of the assessee during the said program i.e., the concert. The Hon'ble Madras High Court in the case of **CIT vs. Sundaram Finance (P.) Ltd., (supra)**, while considering the issue of allowability of the claim of expenditure incurred for an advertisement in the souvenir brought out by the political party has held in para nos.7 to 9 as under:

"7. We now proceed to consider the contention of the revenue that even as advertisements, the publications in the souvenirs had not reached a cross-section of the community and, therefore, they had failed as advertisements, in that they had not served any purpose and, consequently, the amount expended by the assessee cannot be allowed as a deduction. We have to bear in mind that basically an advertisement in a souvenir brought out by an organisation or institution is nothing but a media through which

those in business attempt to establish contact with customers with a view to push their products in the market or pursue more extensively their business activity. In that attempt, those who publish such advertisements may either succeed or fail. But that- is really not the criterion while considering the question of the allowability of the expenses incurred in connection therewith as a deduction in the computation of the income. Such advertisements, though they may not bring any direct or immediate benefits, it is not impossible that on seeing an advertisement, at some time or other, the advertiser may secure a new customer and that would enable him or it to push his or its products in the market of to have contact with the customer with a view to facilitate the carrying on of his or its business Indeed, a cannot be gainsaid that souvenirs are one of the recognised media of publicity. Depending upon the capacity to meet the expenditure, a businessman can advertise in more than one newspaper or magazine or in several issues of the same newspaper or magazine. We do not see how the publication of the advertisement in more than one souvenir published by the same organisation or party will not qualify for the deduction, if the expenditure in that regard had been established to have been incurred. It is only with a view to communicate and spread far and wide the business activities of a particular advertiser that normally an advertisement is resorted to. It may be that most often souvenirs are handled only on the occasion of their release and thereafter not given a second look. Even so, it is quite possible that some person in a remote corner lays his hands on the souvenir and then finds out that his business requirements will be met or satisfied by the company or the person, who had inserted the advertisement. In that case, the purpose of the advertisement is fulfilled, though it may still be that really a large section of the community might not have come across the advertisement published in such souvenirs.

Besides, there is an assumption in the argument of the revenue that the souvenirs did not reach the society and that its members did not at all benefit by them for which there is no warrant at all. We are, therefore, unable to accept the argument that as advertisements the publications made in the souvenirs have failed and the expenses have to be disallowed on this score.

8. We have noticed that on the materials made available, the expenditure incurred by the assessee was not given as a bounty to the political party which had brought about the souvenirs. The expenditure incurred by the assessee for the purpose of these advertisements might not have been voluntary, but it cannot be denied that it had been incurred for the benefit of the assessee an amounts expended for commercial expediency, which means and included everything that serves to promote commerce and includes every means suitable to such an end. Earlier, it had been noticed that advertisements either in newspapers or magazines or souvenirs. etc help companies and members of the business community to create and establish contact with the customers for the purpose of enabling the companies or the businessmen to promote their business and push the products manufactured by them in the market. Indeed, the motive with which the amounts are expended for inserting advertisements is really not material so long as the expenditure is incurred for the purpose of the business. Undoubtedly, there is an element of advertisement resulting in a greater awareness regarding the facilities available for finance extended by the assesses to customers of different kinds as a result of the insertions in the souvenirs. It may be that in some cases such advertisements may bear fruit immediately and there may he immediate benefit. There may be delayed benefit also directly or indirectly, in some cases, there may be no direct or indirect benefit at all. But so long as the purpose of inserting the

advertisements is covered by expediency, then, if such an expenditure indirectly facilitates the carrying on of the business, then it would be an expenditure laid out wholly and exclusively for the purpose of such business. In CIT v. Malayalam Plantations Lal [1964] 53 1TR 140, the Supreme Court observed:

> *".....The expression for the purpose of the business is wider in scope than the expression for the purpose of earning profits range is wide: it may take in not only the day-to-day running of a business but also the rationalisation of its administration and modernisation of its machinery, it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a precondition to commence or for the carrying on of a business, it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business (p. 150)."*

In the light of the aforesaid statement of the law laid down by the Supreme Court, we may consider the circumstances under which and the reason for which the advertisements were released by the assessee, For the assessment year with which we are concerned, the assessed income of the assessee from its financing business is about 66 lakhs of rupees. That indicates the large volumes of the business carried on by the assessee on an extensive scale. Financing business knows no geographical limits, boundaries,

borders frontiers. The assessee thought that it would be more profitable and advantageous to a to further extend its business outside the State of Tamil Nadu. The advertisement in the souvenir had been examined by the Tribunal and indeed was also made available for our inspection. The advertisement brings out prominently the business activities of the assessee and the ready availability of finance for such purpose as stated therein. The object behind this advertisement is only is extend the business of the assessee outside Tamil Nadu State and it cannot be said that such an attempted extension through the medium of advertisements in souvenirs published by organisations outside the Statue were not for business. We are, therefore, of the view that the amount of Rs.50,000 expended by the assessee fir advertisements in the souvenirs was done with a view to promote its business and, therefore, could be justified as having been expended for commercial expediency. We may also point out that though such advertisements may not have the result of enabling the assessee to earn income in that year or immediately, if it enables the assessee either to extend its business or to extend and promote its business even in the future, such an expenditure would be deductible. It is not necessary in such cases that there should be a profit in the very year in which the allowance is claimed on the expenditure incurred. We are, therefore, of the view that the expenditure in this case incurred by the assessee would be one laid out or expended wholly or exclusively for the purpose of the business and would be eligible for the deduction under section 37(1). We may point that in British Electrical & Pumps (P.) Ltd's case (supra), it has been held that expenditure incurred not with a view to the direct and immediate benefit for purpose of commercial expediency but in order indirectly to facilitate the carrying on of the business, is expenditure laid out wholly and exclusively for

purposes of the trade within the meaning of section 37 and that the primary motive in incurring the expenditure admissible to a deduction need not be directly to earn income thereby.

9. We have earlier referred to the Mount Circular No.200, dated 26-6-1976, which it is not disputed, would be applicable to the case of the hardship caused to the assessee as a result of disallowance of the part of the expenditure on advertisements in souvenirs and clarified that no distinction need be made regarding the expenditure on advertisements in souvenirs and other types of advertisements and that expenditure on advertisements in souvenirs may be allowed, if the conditions under rule 6B are fulfilled and there is evidence that the expenditure had been incurred. In this case, the authorities below were satisfied that the expenditure had been incurred by the assessee and that the conditions under rule 6B were also satisfied. This circular, as pointed out by the Supreme Court in K.P Vargkese's case (supra) would be binding on the Revenue in administering or executing the provisions in the Act. Thus, on a consideration of the different facets of the question, we are of the view that the Tribunal was right in its conclusion that the expenditure of Rs.50,000 incurred by the assessee towards advertisement charges in souvenirs would be an allowable item of expenditure. We, therefore, answer the question in the affirmative and against the revenue. The assessee will be entitled in the costs of this reference. Counsel fee Rs. 500."

8.3. Thus, the Hon'ble Madras High Court has after considering the CBDT's Circular no.200 dated 28.06.1976 has held that the object behind advertising is only to extend

the business of the assessee and it cannot be said that such attempting extension through the medium of advertisement in souvenir published by an organization outside the State were not for business. The CBDT in the said Circular also pointed out that there should not be any distinction between the advertisement in normal course as well as advertisements in the souvenir if there is an evidence that the expenditure has been incurred by the assessee. In the case in hand, the Assessing Officer has not disputed the incurrence of expenditure by the assessee on account of advertisement through these devotional books and therefore, the reasons and grounds cited by the Assessing Officer as well as the learned CIT(A) for disallowing the claim are completely against the instructions of the CBDT in Circular no.200 dated 28.06.1976. Accordingly, in the facts and circumstances of the case, when the incurrence of expenditure is not in dispute and the advertisement of the assessee through these books is also not questioned by the Assessing Officer, then the claim of expenditure cannot be disallowed on the ground that the books which are sponsored by the assessee are devotional or

spiritual in nature not connected with the business activity of the assessee. Hence, we decide this issue in favour of the assessee. The Assessing Officer is directed to allow the claim of the assessee.

9. The assessee has also raised additional grounds of appeal under Rule 29 of ITAT Rules, 1963 which read as under:

1. *"That on the facts and circumstances of the case and in law, the transaction relating to sale of shares of Kakinada Seaports Limited is in essence cancelled based on substance over form theory; consequently, no income should be subject to taxation.*
2. *That on the facts and circumstances of the case and in law, the transaction relating to sale of shares of Kakinada Seaports Limited is in essence cancelled as per the "look at" test theory laid down by the Hon'ble Supreme Court in the case of Vodafone International Holdings B.V. us. UOI Civil Appeal No.733 of 2012].*
3. *That on the facts and circumstances of the case and in law, the transaction in relation to sale of shares of Kakinada Seaports Limited was entered under threat and coercion, rendering it legally voidable, which subsequently became void by cancellation of transaction; consequently, no income should be subject to taxation.*
4. *That on the facts and circumstances of the case and in law, the transaction relating to sale of shares of Kakinada Seaports Limited should not be chargeable to tax as per real income theory.*

5. *That on the facts and circumstances of the case and in law, the income arising out of the aforesaid voidable transaction, which subsequently became void by cancellation of transaction, should be excluded from computation of taxable income."*

10. The learned Authorised Representative of the Assessee has submitted that during the year under consideration the assessee has sold shares of Kakinada Seaports Limited a subsidiary of the assessee company to M/s. Auro Infra Private Limited **[**Formerly known as Aurobindo Realty & Infrastructure Private Limited**]** and also declared long term capital gains of Rs.373 crores. However, the shares of Kakinada Seaports Limited were sold under severe threat and coercion from the political authorities and persons who were part of erstwhile ruling party in Andhra Pradesh. The sale was not voluntary, but under the compulsion and hence, the transaction was voidable under Indian Contract Act, 1872. After the change of Government in pursuance to the Assembly Elections held in 2024, the assessee filed a criminal complaint with Economic Offense Wing on 02.12.2024. By taking the cognizance of the complaint, the Enforcement Directorate of PMLA initiated the

proceedings, as a result of which, M/s. Auro Infra Private Limited realized that past purchase of shares of Kakinada Seaports Limited from assessee need to be cancelled and reversed. Therefore, M/s. Auro Infra Private Limited entered into a transaction of share agreement of Kakinada Seaports Limited to restore the original rights of the assessee at a price which includes original price and interest leading to virtual/factual cancellation of the entire transaction. The learned Authorised Representative of the Assessee has submitted that though the reversal of the transaction is by way of a separate share purchase agreement, however, it is in fact, restoring the assessee in the original position of holding of shares of Kakinada Seaports Limited. A share sale agreement has been executed between the M/s. Auro Infra Private Limited and assessee in December 2024, whereby the shares earlier transferred in favour of M/s. Auro Infra Private Limited were returned and retransferred in the name of the assessee. Therefore, the learned Authorised Representative of the Assessee has submitted that the entire effect of this development is nullifying the earlier transaction of transfer of

shares resulting Rs. NIL income in the hand of the assessee which was offered to tax in the return of income. He has thus, submitted that all these events are matter of record and even the proceedings are pending before the Directorate of Enforcement on the complaint filed by the assessee. He has referred to the complaint dated 21.12.2024 filed by the assessee and FIR dated 02.12.2024, share purchase agreement entered into between the Kakinada Seaports Limited and M/s. Auro Infra Private Limited dated 22.12.2024, summons issued by the Enforcement Directorate to the Director/Managing Director of M/s. Auro Infra Private Limited dated 11.12.2024 as well the summons of Enforcement Directorate to Sri Polavarapu Jaidev dated 20.12.2024. The learned Authorised Representative of the Assessee has submitted that all these events and developments are subsequent to the order passed by the Assessing Officer as well as the learned CIT(A). Therefore, the assessee could not raise these issues before the authorities below. However, there is no legal embargo on the jurisdiction of the Tribunal to entertain/admit the additional issues

raised for the first time by the assessee. He has also referred to the valuation report of the shares, computation of the purchase consideration as well as other relevant evidence to show that the initial transaction of transfer of shares by the assessee in favour of M/s. Auro Infra Private Limited was not a voluntary transfer, but an illegal act under the coercion and force exerted by the political persons in power at that point of time. Thus, the learned Authorised Representative of the Assessee has submitted that these additional grounds may be admitted for adjudication. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in the case of **National thermal Power Co. Limited vs. CIT [1998] 229 ITR 383 (SC)** as well as Judgement of Hon'ble Supreme Court in the case of **Jute Corporation of India Ltd., vs. CIT [1991] 187 ITR 688 (SC)**.

10.1. The learned Authorised Representative of the Assessee then, referred to be original agreement and submitted that as per the terms of the original agreement, it is clear that the same was done under threat and coercion and pointed out that at the time of executing the said

agreement dated 24.06.2020 the consideration for share was deliberately left unfixed and as per Clause-4.3.3 it is stated that the purchase price will be the valuation under taken by Merchant Banker chosen solely by the purchaser. Therefore, the assessee was put at a receiving end and signed the said agreement under the coercion. The terms and conditions of the side agreement are one-sided as apparent from the contents of the said agreement. Thereafter, an Addendum was entered into on 03.09.2020 wherein the purchase consideration was determined by the buyer at Rs.494 crores and by a Chartered Accountant and not determined by the Merchant Banker which shows that the valuation was determined by the buyer arbitrarily and forced the assessee to accept the same. The learned Authorised Representative of the Assessee has pointed out that the fair value of the shares at that point of time was around Rs.2689 crores, whereas the purchaser fixed the price of shares at Rs.494 crores. The assessee was pressurized to accept the gross undervalued price as fixed by the buyer and made to understand that non-acceptance would lead to serious adverse consequences. The

learned Authorised Representative of the Assessee has also referred to the Special Audit initiated by the Government and subsequent developments and submitted that the political party in the power at that point of time using its authority to exert pressure by initiating a Special Audit of Kakinada Seaports Limited for the period from 2014-2015 to 2018-2019. The Auditor filed his report dated 30.03.2020 raised the discrepancies of Rs.965.65 crores. By using the said action against the assessee, the original sale agreement was got executed and consequently, the demand was reduced from Rs.965.65 crore to Rs.9.03 crores. Thus, the learned Authorised Representative of the Assessee has submitted that the assessee was also pressurized and compelled to sell the shares of Kakinada Seaports Limited to M/s. Auro Infra Private Limited. The shares for the value of Rs.400 crores were forced to transfer in favour of M/s. Auro Infra Private Limited at a value of Rs.12 crores which shows that the transfer of shares of Kakinada SEZ Limited was not voluntary and valid, but it was an invalid transfer under compulsion and coercion. The learned Authorised Representative of the

Assessee has referred to various agreements for purchase and sale of shares and subsequently after the registration of FIR and cognizance taken by the Enforcement Directorate and Economic Offenses Wing, these shares were retransferred in favour of the assessee/it's holding company. Thus, there is no income in the hand of the assessee at the time of the forced transfer of shares as the transaction is now reversed by retransferring all the shares after the proceedings were initiated by the Enforcement Directorate and registration of FIR. The learned Authorised Representative of the Assessee has thus submitted that, all these subsequent developments and evidence is required to be examined on the point whether there was an actual transfer of shares by the assessee in favour of M/s. Auro Infra Private Limited or not? In support of his contention, he has relied upon the following decisions:

a) CIT Vs. Lok Housing & Constructions Limited (2015) 232 TAXMAN 159 (Bom)
b) Govardhan G. Vanani Versus DCIT 2015 (12) TMI 1616-ITAT MUMBAI.

c) Seema Promoters and Builders Pvt. Ltd. Versus DCIT 2022 (11) TMI 1289-ITAT Mumbai.

d) Shivsagar Estates (AOP) Versus CIT ([1993] 204 ITR 1).

10.2. The learned Authorised Representative of the Assessee has thus submitted that the substance of the transaction would prevail over its form and therefore, the transaction is required to be considered in light of the facts and subsequent developments now brought on record by the assessee.

11. The learned DR on the other hand, has submitted that the assessee itself has offered the long term capital gains on transfer of shares in the return of income and therefore, the assessee cannot withdraw the said claim at this stage. There is no addition of this transaction either by the Assessing Officer or by the learned CIT(A), but it is the self-assessed income of the assessee which were offered to tax and therefore, the assessee cannot be allowed to withdraw the said income offered to tax based on these complaints and retransfer of shares which is altogether a separate transaction. Thus, the learned DR has vehemently opposed

to the admission of the additional grounds raised by the assessee and submitted that once this issue is not emerging from the Orders of the authorities below, then it cannot be raised before the Tribunal at this stage.

12. We have considered the rival submissions as well as relevant material on record. In return of income, the assessee has offered long term capital gains of Rs.373 crores on account of sale of shares of Kakinada Seaports Limited to M/s. Auro Infra Private Limited. Since, this was the income offered by the assessee and accepted by the Assessing Officer and therefore, there was no question of dispute on this point at the stage of assessment order as well as appellate order passed by the learned CIT(A). Now the assessee has raised this additional issue that the transaction of transfer of shares of Kakinada Seaports Limited to M/s. Auro Infra Private Limited was not a valid transaction as the same was done under coercion and threat from the ruling political person by using their power. After the change of dispensation as a result of Assembly Elections of 2024, the assessee filed the complaint/ FIR against those persons alleging that the shares

of Kakinada Seaports Limited were taken away by these persons illegally under threat and coercion. The assessee has now pointed out that the valuation of these shares was highly undervalued as one side determination by the buyer through his own valuer a Chartered Accountant and not even by a Merchant Banker. There is no dispute regarding the FIR registered on the complaint of the assessee and cognizance taken by the Enforcement Directorate as well as the Economic Offences Wing. The assessee has also filed additional evidences in the shape of complaint dated 02.12.2024, FIR dated 02.12.2024, share purchase agreement of 2020, and share purchase agreement whereby the shares were returned to the Assessee Group by the earlier buyer after these developments of filing FIR and cognizance taken by the Enforcement Directorate, the valuation reports, summons issued by the Enforcement Directorate which corroborates the claim of the assessee that the initial transfer of shares were under duress, coercion and threat from the politicians in power in the State of Andhra Pradesh. The question arise, whether the Tribunal can entertain additional

grounds at the stage and that too in respect of a transaction which was declared by the assessee in the return of income and accepted by the Assessing Officer while passing the assessment order. The Hon'ble Supreme Court in the case of **Jute Corporation of India Ltd., vs. CIT (supra)** analyzed the powers/ jurisdiction of the Appellate Authority and has held in para nos.5 to 9 as under:

> *"5. In Commr. of Income Tax, U.P. v. Kanpur Coal Syndicate MANU/SC/0123/1964: [1964]531TR225(SC) a three Judge Bench of this Court discussed the scope of Section 31(3)(a) of the Income Tax Act, 1922 which is almost identical to Section 251(1)(a). The Court held as under (at p. 328 of AIR):*
>
> > *"If an appeal lies, Section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under Clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has. therefore, plenary powers in disposing of an appeal The scope of his power is conterminous with that of the Income Tax Officer. He can do what the Income Tax Officer can do and also direct him to do what he has failed to do. (emphasis supplied)*

6. The above observations are squarely applicable to the interpretation of Section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is conterminous with that of the Income Tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer.

7. In Addl. Commr. of Income Tax, Gujarat v. Gurjargravures P. Ltd. MANU/SC/0200/1977: [1978]111ITRI(SC) (supra) this Court has taken a different view, holding that in the absence of any claim made by the assessee before the Income Tax Officer regarding relief, he is not entitled to raise the question of exemption under Section 84 before the Appellate Assistant Commissioner hearing appeal against the order of Income Tax Officer. In that case the assessee had made no claim before the Income Tax Officer for exemption under Section 84 of the Act, no such claim was made in the return nor any material was placed on record supporting such a claim before the Income Tax Officer at the time of assessment.

The assessee for the first time made claim for exemption under Section 84 before the Appellate Assistant Commissioner who rejected the claim but on further appeal the Appellate Tribunal held that since the entire assessment was open before the Appellate Assistant Commissioner there was no reason for his not entertaining the claim, or directing the Income Tax Officer to allow appropriate relief. On a reference the High Court upheld the view taken by the Tribunal. On appeal this Court set aside the order of the High Court as it was of the view that the Appellate Assistant Commissioner had no power to interfere with the order of assessment made by Income Tax Officer on a new ground not raised before the Income Tax Officer, and therefore the Tribunal committed error in directing the Appellate Assistant Commissioner to allow the claim of the assessee under Section 84 of the Act. Apparently this view taken by two Judge Bench of this Court appears to be in conflict with the view taken by the three Judge Bench of the Court in Kanpur Coal Syndicate's case MANU/ SC/0123/1964: [1964] 53 1TR 225(SC) (supra). It appears from the report of the decision in Gujarat case the three Judge Bench decision in Kanpur Coal Syndicate (supra) case was not brought to the notice of the Bench in the Gurjargravures P. Ltd. MANU/SC/0200/1977: [1978] 111 1TR 1 (SC) (supra). In the circumstances the view of the larger Bench in the Kanpur Coal Syndicate (supra) holds the field. However we do not consider it necessary to overrule the view taken in Gurjargravures P. Ltd. (supra) case as in our opinion that decision is founded on the special facts of the case, as would appear from the following observations made by the Court: "As we have pointed out earlier, the statement of the case drawn up by the Tribunal does not mention that there was any material on record to sustain the claim for exemption which was made for the first time before the

Appellate Assistant Commissioner. We are not here called upon to consider a case where the assessee failed to make a claim though there was no evidence on record to support it, or a case where a claim was made but no evidence or insufficient evidence was adduced in support. In the present case neither any claim was made before the Income Tax Officer, nor was there any material on record supporting such a claim." The above observations do not rule out a case for raising an additional ground before the Appellate Assistant Commissioner if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made, or that the ground became available on account of change of circumstances or law. There may be several factors justifying raising of such new plea in appeal, and each case has to be considered on its own facts. If the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fact rule can be laid down for this purpose.

8. In Rai Kumar Srimal v. Commr. of Income Tax, West Bengal III MANU/WB/0153/1974: [1976]1021TR525(Cal) a Division Bench of Calcutta High Court presided over by Sabyasachi Mukharji, J., as he then was held that the Appellate Assistant Commissioner was entitled to admit new ground or evidence either suo motu or at the invitation of the parties. If he is acting on being

invited by the assessee, then there must be some ground for admitting new evidence in the sense that there must be some explanation to show that the failure to adduce earlier the evidence sought to be adduced before the Appellate Assistant Commissioner was not willful and not Unreasonable. This view is reasonable and it finds favour with us.

9. In the instant case the assessee was carrying on manufacture and sale of jute. In the assessment year of 1974-75 he did not claim any deduction on its liability to pay Purchase Tax under the provisions of the Bengal Raw Jute Taxation Act, 1941, as the appellant entertained a belief that it was not liable to pay Purchase Tax under the aforesaid Act. But later on it was assessed to Purchase Tax and the order of assessment was received by if on 23-11-1973. The appellant disputed the demand and filed an appeal before the Appellate Authority and obtained stay order. The assessee thereafter claimed deduction for the amount of Rs.11,54,995/- towards his liability to pay Purchase Tax as deduction for the assessment year 1974-75. The assessee had not actually paid the Purchase Tax as he had obtained stay from the Appellate Authority nonetheless its liability to pay tax existed, and it was entitled to deduction of Rs.11,54,995 as was held by this Court in Kedarnath Jute Mfg. Co. Ltd. v. Commr. of Income Tax (Central), Calcutta MANU/SC/0438/1971: [1971]821TR363(SC). There was no dispute about these facts. In these circumstances the Appellate Assistant Commissioner allowed the assessee to raise this question and after hearing the Income Tax Officer, he granted the deduction from the assessee's income. The Tribunal took a contrary view placing reliance on the decision of this Court in Gurjargravures P. Ltd. MANU/SC/0200/1977: [1978] 111 1TR 1 (SC) (supra). As already discussed the facts of the instant case are quite clear, unlike the facts involved in Gurjargravures case. We

are, therefore, of the view that the view taken by the Appellate Tribunal and the High Court is not sustainable in law. In our opinion, the High Court and Tribunal both committed error in refusing to state the case, or making a reference."

12.1. Thus, the Hon'ble Supreme Court has observed that the Act does not place any restriction or limitation on exercise of the Appellate Power. Even otherwise, the Appellate Authority while hearing an appeal against the order of a Subordinate Authority has all the powers which Original Authority may have in deciding the question before it, subject to the restriction or limitation, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the Appellate Authority is vested with all the plenary powers which the Subordinate Authority may have in the matters. In the said case, the assessee did not claim any deduction of its a liability to pay Purchase Tax under the provisions of Bengal Rosewood Taxation Act, 1941 as the assessee entertained the belief that it was not liable to pay Purchase Tax under the aforesaid Act, but later on it was assessed to purchase tax and the order of the assessment was received by it, though the assessee disputed the demand

and filed an appeal before the Appellate Authority and thereafter, the assessee claimed the deduction for the said amount towards his liability to pay purchase tax as deduction. The Appellate Assistant Commissioner allowed the assessee to raise this question and after hearing the Income Tax Officer, he granted the deduction from the assesses income. On further appeal, the Tribunal took a contrary view which was also sustained by the Hon'ble High Court. On further appeal, the Hon'ble Supreme Court has reversed the view taken by the Tribunal and High Court and upheld the order of the Appellate Assistant commissioner. A similar view was taken by the Hon'ble Supreme Court in the case of **National Thermal Power Co. Ltd., vs. CIT (supra)** and in Para nos.5 to 8 the Hon'ble Supreme Court has held as under:

> *"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon. as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If,*

for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T. MANU/SC/0044/1991: [1991] 187 1TR 688 (SC) this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, If any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant

Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad MANU/DE/ 0072/ 1980: [1981] 128 1TR 388 (Delhi), C.I.T. Karamchand Premchand P. Ltd. MANU/GJ/0008/1968: [1969] 74 1TR 254 (Guj) and C.I.T. v. Cellulose Products of India Ltd. MANU/GJ/0029/1984: [1985] 151 1TR 499 (Guj). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."

12.2. In the case of NTPC, the Hon'ble Supreme Court has observed that u/sec.254 of the Act, the Appellate Tribunal may after giving both the parties to the appeal an

opportunity of being heard pass such orders thereupon as it think fit. The powers of the Tribunal in dealing with the appeals is thus expressed in the widest possible term. If it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the said item. The Hon'ble Supreme Court has further observed that there is no reason to restrict the power of the Tribunal u/sec.254 of the Act only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals). Therefore, the assessee as well as the department have the right to file an appeal/cross-objection before the Tribunal. Though the Tribunal will have the discretion to allow or not to allow new ground to be raised, but where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings, there is no reason that such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly

assess the tax liability of an assessee. In view of the above Judgment of the Hon'ble Supreme Court if the additional ground raised by the assessee which is necessary for determining the correct tax liability of the assessee, then the grounds raised by the assessee first time before the Tribunal should be allowed. In the case in hand, the assessee raised this issue first time before the Tribunal and the assessee has supported the claim with the facts as well as record not in disputed though the same was not available before the Assessing Officer as well as before the learned CIT(A) at the time of passing their respective orders. Since it is a question of real income arising from the transaction of sale of shares and a question of assessment of the correct tax liability of the assessee therefore, in the facts and circumstances of the case and in the interest of justice, we are of the considered opinion that the additional grounds raised by the assessee needs to the adjudicated on merits, after verification and examination of the supporting evidence filed by the assessee as an additional evidence. Accordingly, we admit the additional grounds raised by the assessee and also taken on record the

additional evidence filed by the assessee in respect of the said ground.

13. Since these entire developments as well as the transactions of retransferring of the shares are subsequent to the orders passed by the authorities below therefore, the additional evidences filed by the assessee in respect of the additional grounds is required to be examined and considered, after confronting with the Assessing Officer. We, therefore, remand this issue along with the additional evidences to the record of the learned CIT(A) to get the additional evidences filed by the assessee to be verified and examined by the Assessing Officer during the remand proceedings and then, consider and adjudicate these additional grounds as per law. The assessee has relied upon various decisions on the issue of concept of real income which are relevant only at the time of deciding the additional grounds on merits. Accordingly, those decisions as relied upon by the assessee compiled in the case law synopsis are to be considered by the learned CIT(A) while deciding the issue on merits. Needless to say, before passing the order the

learned CIT(A) shall afford an appropriate opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 21.01.2026.

Sd/-	Sd/-
[MANJUNATHA G.]	[VIJAY PAL RAO]
ACCOUNTANT MEMBER	VICE PRESIDENT

Hyderabad, Dated 21st January, 2026.

VBP

Copy to :

1.	Kakinada Infrastructure Holdings Private Limited, 8-2-418, 3rd Floor, Meenakshi House, Road No.7, Banjara Hills, Hyderabad – 500 034.
2.	The DCIT, Circle-2(1), IT Towers, AC Guards, Masab Tank, Hyderabad – 500 004. Telangana.
3.	The Pr. CIT, Hyderabad.
4.	The DR, ITAT, "A" Bench, Hyderabad.
5.	Guard file.

BY ORDER

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