

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " C "**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. Nos.1678 to 1681/Bang/2013
(Assessment Years : 2002-03 to 2005-06)

Sri B. Surya Kumar,
Prop. Sri Durga Jewellers,
Vasudev Main Road,
Haleyangady-574 146.
PAN ADTPK 0773C

.... Appellant

Vs.

Income Tax Officer,
Ward 1(1), Mangalore.

..... Respondent.

Appellant By : Shri Narendra Sharma, Advocate.
Respondent By : Dr. Shankar Prasad K, JCIT (D.R)

Date of Hearing : 5.2.2015.
Date of Pronouncement : 27.2.2015.

O R D E R

Per Shri Jason P. Boaz :

These appeals by the assessee are directed against the combined order of the Commissioner of Income Tax (Appeals), Mysore dt.21.3.2012 for Assessment Years

2002-03 to 2005-06, confirming the levy of penalty under Section 271A of the Income Tax Act, 1961 (herein after referred to as 'the Act') in those years.

Order on the petitions for condonation of delay in filing these appeals before the ITAT, Bangalore for A.Ys 2002-03 to 2005-06.

2. At the outset of the proceedings before us, it was observed that there was a delay of 515 days in filing these appeals before the Tribunal.

3. The facts of the case, briefly, are as under :-

3.1 The impugned orders of the learned CIT(A) confirming the levy of penalty under Section 271A of the Act for A.Ys 2002-03 to 2005-06 was passed vide a combined order dt.21.3.2012. Admittedly, the order was received by the assessee on 9.5.2012 and therefore these appeals for A.Ys 2002-03 to 2005-06 ought to have been filed before this Tribunal on or before 8.7.2012. These appeals were however filed on 4.12.2013, thereby leading to a delay of 515 days.

3.2 Along with the appeals for Assessment Years 2002-03 to 2005-06. The assessee has filed 4 separate but similar petitions for condonation of delay of 515 days in filing the appeals before this Tribunal. The reasons for the said delay in filing the appeal as

submitted by the assessee in the said petitions, are at paras 9 and 10 thereof which are extracted hereunder :-

“9. The appellant was subjected to a wrong professional advice on the case. When the appellant approached the present counsel for professional advice as regard to the next course of action, the present counsel after verifying and analyzing the case, was of the opinion that the appellant has a very good case on merits and suggested the appellant to file an appeal before Income Tax Appellate Tribunal, Bangalore against the order of the CIT (Appeals) dt.21.3.2012 seeking for condonation of delay in the matter.

10. Following the instructions and proper professional guidance of the present counsel, within reasonable time of obtaining the professional advise by the present counsel, the appellant has put all the efforts in filing the present appeal before this Hon'ble ITAT, Bangalore. Considering the above facts, the appellant humbly pray before your Honour to kindly condone the delay and adjudicate the matter on merits in the interests of justice and equity.”

3.3 The assessee in support of its petition seeking condonation of delay, prayed that the Tribunal take a lenient view in the matter, condone the delay and dispose off the matter based on the merits of the case and not dismiss the matter on the basis of technicalities. In support of this proposition, the assessee, inter alia, placed reliance on the following judicial pronouncements :-

- (i) Collector, Land Acquisition V MST Katiji & Others (1987) 167 ITR 471 (SC).
- (ii) Concord of India Insurance Co. Ltd. V Smt. Nirmala Devi & Others, 118 ITR 507 (SC).
- (iii) CIT V West Bengal Infrastructure Development Finance Corpn. Ltd. (2011) 334 ITR 269 (SC).
- (iv) Raghavendra Constructions V ITO in ITA 425/Bang/2012.
- (v) Shakuntala Hegde L/R of R.K. Hegde V ACIT in ITA No.2785/Bang/2004.
- (vi) CIT V ISRO Satellite Centre in ITA No.532/2008 (Kar H.C.)

It was submitted that if the delay in filing these appeals is not condoned, the assessee would be put to great hardship. It was therefore prayed that the delay of 515 days in filing these appeals be condoned.

4. Per contra, the learned Departmental Representative opposed the assessee's prayer for condonation of delay of 515 days in filing the appeals for Assessment Years 2002-03 to 2005-06. The learned Departmental Representative submitted that the delay of 515 days should not be condoned in a routine manner and that a distinction ought to be drawn between a case where the delay is inordinate, as it is in the case on hand i.e. of 515 days and in cases where the delay is of a few days. The learned Departmental Representative further contended that the explanation put forward by the assessee for the delay of 515 days (supra) does not amount to reasonable and sufficient courses which were beyond the assessee's control and the assessee has certainly not proved beyond doubt that he was diligent and not guilty of negligence whatsoever in the matter. The learned Departmental Representative prayed that since the inordinate delay in filing of these appeals being clearly due to the negligence on the part of the assessee, the petitions for condonation of delay of 515 days in filing

the appeals be rejected and the appeals be dismissed on this score, without admitting them for adjudication.

5.1 We have heard both parties and perused and carefully considered the material on record, including the judicial decisions cited. The Hon'ble Apex Court in the case of Vedabai alias Vijayanatabai Baburao Patil V Shantaram Baburao Patil & Ors (2002) 253 ITR 798 has held that while exercising discretion, distinction should be made between a case where the delay is inordinate and a case where the delay is of a few days, which may deserve a liberal approach. The exercise of discretion, their Lordships observed, would depend on the facts of each case and no hard or fast rule can be laid down in this regard. In the above cited case, the application for condonation of delay in filing the appeal was 7 days. In the case of Ganga Sahai Ram Swarup V ITAT (2004) 271 ITR 512 (All) the delay was of 12 days in filing the appeal and it was held therein that a liberal view ought to be taken, as there was a delay of only a very short period. Even in the land mark decision on the issue of condonation, Collector, Land Acquisition V MST Katiji (supra), cited by the assessee, wherein the Hon'ble Apex Court laid down that courts should have a liberal and practical approach

in exercising its discretionary powers of condonation of delay, the delay was of 4 days.

5.2 According to the assessee after the impugned orders of the learned CIT(A) dt.21.3.2012 were served on the assessee on 9.5.2012, the assessee made an application under Section 154 of the Act dt.14.5.2012 to the CIT (Appeals) for rectification of his orders. The learned CIT(A) by order dt.9.7.2013 dismissed the assessee's application. Subsequent thereto, the assessee filed these appeals before the Tribunal on 4.12.2013. From the averments made in paras 9 & 10 of the petition for condonation of delay we are of the opinion that not only the submissions are merely self-serving statements, the veracity of which are not established but also there is an inordinate delay of 515 days in filing the appeal. The assessee in its averments has not made out of a case that there was reasonable cause which being beyond the control of the assessee, prevented him from filing the appeals in time before the Tribunal. The delay cannot be condoned merely because the assessee's case calls for sympathy or merely out of benevolence. For the exercise of discretion in condoning the delay, it must be established beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence on his part. Sufficient cause as

contemplated in the limitation provisions must be a cause which is beyond the control of the party. In the case on hand, the factual matrix, in our view, clearly establishes 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. Therefore in our opinion, in the factual matrix of this case there exists no sufficient and reasonable cause for the inordinate delay of 515 days in filing the appeals for Assessment Years 2002-03 to 2005-06 by the assessee. In coming to this finding, we draw support from the decisions of the Hon'ble Apex Court in the case of MST Katiji (supra), Vedabai alias Vijayanatabai Baburao Patil (supra), of the Hon'ble Allahabad High Court in the case of Ganga Sahai Ram Swaroop (supra) and of the ITAT, Chennai Bench (Third Member) in the case of JCIT V Tractors & Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai) (TM). The cases cited by the assessee of various courts and of the co-ordinate benches of this Tribunal (supra), have been duly considered and with due respects we find the factual matrix different therein. We have considered the factual matrix of this case to reach the finding that there existed no sufficient and reasonable cause for the inordinate delay of 515 days in filing the appeal as the assessee has also not been able to establish that he was

prevented by sufficient causes beyond his control from filing these appeals on time.

In this view of the matter, we are of the view that, in the case on hand, the cause of substantial justice would not be served by condoning the inordinate delay of 515 days in filing these appeals for which no cogent reasons have been given. We accordingly reject these petitions for condonation of delay for Assessment Years 2002-03 to 2005-06. Consequently, the assessee's appeals for Assessment Years 2002-03 to 2005-06 are not admitted for adjudication on merits and are dismissed in limine.

6. In the result, the assessee's appeals for Assessment Years 2002-03 to 2005-06 are dismissed.

Order pronounced in the open court on 27TH Feb., 2015.

Sd/-
(RAJPAL YADAV)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - C Bench.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes To Sr. P. S.
4.	Date on which the fair order is placed before the dictating Member
5.	Date on which the fair order comes back to the Sr. P.S.
6.	Date on which the file goes to the Bench Clerk
7.	Date on which the file goes to the Head Clerk
8.	Date on which the file goes to the Assistant Registrar / Sr. P.S.
9.	Date of dispatch of the order