

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

IT(IT)A No.	A.Y.	Appellant	Respondent
607/Bang/21	2016-17	Sri Suhas Suresh Shet, Represented by his GPA holder Smt.Shobha Suresh Shet, No.14D, 13 th Floor, Lower West Block, Klassik Beach Apartments, Near Meenakshi Temple, Bannerghatta Road, Bengaluru [PAN: AXGPS4274B]	Income Tax Officer, International Taxation, Ward-2(1), Bengaluru
608/Bang/21	2016-17		

Appellant by : Shri Ravi Shankar, Adv.

Respondent by : Smt. Priyadarshini Basaganni, Addl.CIT

Date of Hearing : 05-04-2022

Date of Pronouncement : 05-04-2022

ORDER

PER CHANDRA POOJARI, A.M:

These two appeals filed by the assessee are directed against the different orders of CIT(A)-12, Bengaluru having common dated 22-09-2021, wherein the CIT(A) confirmed the levy of penalty u/s.271(1)(c) of the Income Tax Act [Act] at Rs.13,19,400/- and levy of penalty u/s.271F of the Act at Rs.5,000/-. In these cases, the assessment order was passed *ex-parte* vide order dt.18-12-2018 latter, the penalty order also passed *ex-parte* u/s.271(1)(c) and u/s.271F of the Act on 18-12-2018. Consequent to this, the assessee filed appeal before the CIT(A) against these two penalty orders. The appeal against 271(1)(c) was filed before the CIT(A) with the delay of 591 days and the appeal against the order of AO

u/s.271 was filed with a delay of 775 days, though these appeals ought to have been filed within thirty days from the receipt of the penalty orders. The assessee filed condonation petition before CIT(A) explaining the reasons for delay with the assessee was a non-resident Indian and he was represented by GPA-holder Smt.Shobha Suresh Shet, the assessee through his mother Smt.Shobha Suresh Shet has engaged professional services of a tax consultant and furnished all the details to the said authorized representative. However, he failed to take any steps towards proper representation of the assessee before the AO or the CIT(A) and hence the assessee was failed to file appeal before the CIT(A) within the time. The assessee, when the notice for hearing came for the AY.2017-18 came and therefore assessment order passed u/s.143(3) of the Act on 27-12-2019, after making various additions. For this assessment year, assessee went for an advice of a tax consultant and he asked for earlier years' records by that time, assessee came to know about the lapse on the part of the earlier counsel and advised to the present counsel that assessee filed the appeals against penalty orders before the CIT(A). Thus, there caused a delay of 591 days in the case of appeal against the order passed u/s.271(1)(c) and 775 days in the case of order passed u/s.271F of the Act. Further, the AR submitted that these facts were duly explained by the assessee before the CIT(A) in both the cases. However, he rejected the condonation petition holding that there was no reasonable cause for filing these appeals belatedly before him. Accordingly, the Ld.AR prayed that the delay may be condoned and appeal may be admitted.

2. On the other hand, Ld.DR replied on the orders of the lower authorities.

3. We have heard the rival submissions and carefully perused the record. While considering a delay in filing the appeal, the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(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 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 a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) 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 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 a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

3.1. 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. Moreover,

no counter-affidavit was filed by the Revenue denying the reasons advanced by the assesseees. It is not the case of the Revenue that the appeals were filed deliberately with delay. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the Tribunal is capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalising an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorised by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalise an illegal and unconstitutional order passed by the lower authority. Therefore, in our opinion, by preferring the substantial justice, the delay has to be condoned.

3.2. The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assesseees was a reasonable cause for not filing the appeals. We have to see the cause for the delay. When there was a reasonable cause, the period of delay may not be relevant factor. In fact, the Madras High Court in the case of CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay 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, 71 days cannot be considered to be

inordinate or excessive. Furthermore, the Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM) condoned more than six hundred days delay. It is pertinent to mention herein that the view taken by the present author in that case was overruled by the Third Member.

3.3. The Madras High Court in the case of Sreenivas Charitable Trust (supra) held that no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of 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 (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction. In this case, the issue on merit regarding granting of deduction u/s. 80IB was covered in favour of the assessee by the Judgment of the Madras High Court. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause" should receive a liberal construction. In our opinion, this Judgment of the Madras High Court is also squarely applicable to the facts of this case. A similar view was taken by the Madras High Court in the case of Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad).

3.4. The Mumbai Bench of this Tribunal in the case of Bajaj Hindusthan Ltd. v. Jt. CIT (AT) (277 ITR 1) has condoned the delay

of 180 days when the appeal was filed after the pronouncement of the Judgment of the Apex Court. Furthermore, the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. The Apex Court in the case of Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi (AIR 1978 SC 537) held that non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counter-affidavit opposing the applications of the assessees, therefore, as held by the Apex Court, there is sufficient cause for condonation of delay. The Supreme Court observed that when the delay was of short duration, a liberal view should be taken. "It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. The Apex Court did not say that longer period of delay should not be condoned. Condonation of delay is the discretion of the Court/Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not filing the appeals within the period of limitation, the delay has to be condoned irrespective of the duration/period. In this case, the non-filing of an affidavit by the Revenue for opposing the condonation of delay itself is sufficient for condoning the delay in filing the appeals before the Tribunal.

3.5. In the judgment rendered by the Supreme Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafa Academy & others (Civil Appeal Nos. 8183 - 8184 of 2013), the Supreme Court has referred to some of the decisions rendered by Hon'ble Courts on the principles to be followed while adjudicating the issue of condonation of delay. For the sake of convenience, some of the judgments are extracted as follows:

a) *In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others (supra)*, a two-Judge Bench observed that the legislature has conferred power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice, for that is the life-purpose for the existence of the institution of courts. The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice. In the said case the Division Bench observed that the State which represents the collective cause of the community does not deserve a litigant-non grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression "sufficient cause".

(b) *In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore (1988)(2 SCC 142)*, Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus: "The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : *Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.(1962)(2 SCR 762)*; *Shakuntala Devi Jain v. Kuntal Kumari(1969)(1 SCR 1006)*; *Concord of India Insurance Co. Ltd. V. Nirmala Devi(1979)(3 SCR 694)*; *Lala Mata Din v. A. Narayanan(1970)(2 SCR 90)*; *Collector, Land Acquisition v. Katiji etc.* There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be

considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."....

(c) In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another (2010)(5 SCC 459), where a two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate. (d) In Improvement Trust, Ludhiana v. Ujagar Singh and others(2010)(6 SCC 786), it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves."

3.6. The principles that emanate from the above said decisions are that, in the matter of condonation of delay in filing appeals beyond the limitation period, the courts are empowered to condone the delay, provided the litigant is able to demonstrate that there was "sufficient cause" in preferring appeal beyond the limitation period. The Courts have also held that the expression "sufficient cause" should receive liberal construction so as to advance substantial justice. Hence, the question of condonation of delay is a factual

matter and the result would depend upon the facts of the case and the cause shown by the assessee for the delay. It has also been opined that generally delays in preferring appeals are required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In view of the foregoing, we are of the view that the assessees have shown sufficient cause for the delay in filing the appeals before the Tribunal. Accordingly, we condone the delay in filing these two appeals before the CIT(A) and remit the entire issue in dispute to decide it on merits to the file of CIT(A) in accordance with law.

4. In the result, these two assessee's appeals are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 5th April, 2022

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bengaluru, Dated: 5th April, 2022

TNMM

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A)-12, Bengaluru*
4. *The ITO (Intl.Taxn.), Ward-2(1), Bengaluru*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

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*Assistant Registrar
ITAT, Bengaluru*