IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" AHMEDABAD
(Conducted Through Virtual Court)
Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member

M.A No. 238/Ahd/2019
(in ITA No. 956/Ahd/2012)
Assessment Year 2006-07

Smt. Manjulaben C. Tomar 1, Vijay Park Gor no Kuvo maninagar, Ahmedabad PAN: ADOPT3287F (Appellant)	Vs	Income Tax Officer, Ward-12(3), Ahmedabad (Respondent)

Appellant by : Shri Hitendra Sheth, A.R.
Respondent by : Shri Alpesh Parmar, Sr. D.R.

Date of hearing : 08-04-2022
Date of pronouncement : 21 -04-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present application filed by the assessee seeks restoration of the appeal filed by the assessee in ITA No.956/Ahd/2012, pertaining to A.Y 2006-07 which was dismissed for want of prosecution vide order dated 27.03.2017.

2. We have noted that the said appeal was disposed off without dealing with the merits of the case and only for the reason that the assessee was

not serious in pursuing the appeal which, it mentioned, was evident by the fact that it did not appear on various dates fixed for hearing.

3. Rule 24 of the Income Tax Appellate Tribunal Rules requires that where none appears for the assessee, the appeal is to be disposed of on merits after hearing the respondent and further after having done so, the assessee appears thereafter and satisfies the Tribunal that there was a reasonable cause for none appearance when the appeal was called for hearing then the Tribunal shall set aside the ex parte order and restore the appeal. Rule 24 of the Income Tax Rules is reproduced herein for clarity:

> *[Hearing of appeal ex parte for default by the appellant.*
>
> *24. Where, on the day fixed for hearing or on any other date to which the hearing may be adjourned, the appellant does not appear in person or through an authorised representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the respondent :*
>
> *Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance, when the appeal was called on for hearing, the Tribunal shall make an order setting aside the ex parte order and restoring the appeal.]*

4. In the facts of the present case, the appeal which was disposed of ex parte was not in accordance with Rule 24 since it did not deal with the merits of the case. The Registry has marked the application filed by the assessee as delayed by 678 days on the basis of limitation prescribed u/s. 254(2) of the Income Tax Act which provides for rectifying any mistake in

the order of the Tribunal and provides a time limit for doing so, which earlier was four years from the end of the month in which the order appealed against was passed, amended to six months w.e.f 01-06-2016.. Since the present application relates to exparte disposal of order, it is not an application seeking rectification in the order passed by the ITAT in terms of section 254(2) of the Act, but merely seeking a recall of the exparte order in terms of Rule 24 of the Income Tax Appellate Tribunal Rules 1963 as noted above. The limitation for moving an application prescribed u/s 254 (2) of the Act therefore does not apply to the present case. This view has been taken by Hon'ble High Court of Delhi in the case of Om Prakash Sangwan in ITA 625/2018 & CM APPL 21436/2018, ITA 626/2018 & CM APPL 21437/2018. The relevant portion of which is reproduced herein below:-

> *" Learned counsel for the appellant sought to impress upon the Court that the period mentioned in Section 254(2) of the Act only applied when the Tribunal notices the error and decides to proceed ahead to rectify it and per se does not indicate any limitation within which the aggrieved ·party (assessee or Revenue) can approach it. He relied upon the judgments of the Allahabad High Court titled Vijay Kumar Ruia v. Commissioner of Income Tax [2011] 15 taxmann.com (Allahabad) and Gujarat High Court titled Liladhar T Khushlani Vs. Commissioner of Customs Tax Appeal No.915 of2016 delivered on 25.01.2017 for this purpose. This Court is of the opinion that those judgments cannot afford the appellant any comfort. Section 254(2) of the Act was advisably amended to curtail extended period of four years which had been provided to either class of litigants to approach the IT AT for a rectification. In this case, the Court has considered the submissions of the parties. In this case, the ITAT did not decide the appeal on the merits as it is mandated to but rather rejected for non-prosecution.*
>
> *Rule 24 of the Income Tax Appellate Tribunal's Rules and the other provisions of both the Income Tax Act and Rules indicate that the IT AT has to decide the appeals or matters before it on the merits. In these circumstances, the ITAT's failure to do so, implies that it exceeded its jurisdiction and instead of deciding on the merits, rejected the appeal merely for non-prosecution. In the given circumstances and keeping in view the fact that Rule 25 does not stipulate any*

period of limitation within which the aggrieved party can approach the Tribunal, it is open to the appellant to approach the Tribunal with a suitable application for restoration of the appeals; in such event, the appeals could be considered on their merits and decided in accordance with law after hearing both the parties, provided, the application is presented before the ITAT within thirty days from today."

5. Moreover, the Ld. Counsel for the assessee has taken the entire blame for the inordinate delay in filing the present application for recalling the ex parte order stating that being a very small Practitioner of tax laws, he was under the mistaken belief that the time period for moving an application was four years as originally prescribed u/s. 254(2), though it had subsequently been reduced to six months by the Finance Act, 2016 w.e.f. 01.06.2016 and he was totally unaware of the same. He pointed out that the ITAT order was dated 27.03.2017 and the amendment had come into effect just nine months back on 01.06.2016 and being a small time practitioner, he was unaware of the same and harboring the belief that there was four years' time to move an application, accordingly, the application got delayed by almost two years, i.e 678 days. He further pointed out that assessee was a very small assessee who had returned net taxable income of Rs. 82,590/- and huge addition had been made in assessment on account of unexplained cash deposits of Rs. 75,000/- and on account of unexplained investment in Mutual Fund of Rs. 13,81,330/- resulting into total addition of Rs. 14,56,330/- against meagre returned of income of Rs. 82,590/-.That penalty had been levied on the same and the assessee was in appeal against the penalty order. That grave prejudice and injustice would be caused to a small assessee like this if he was not given an opportunity of hearing, that too on account of the fault of his counsel.

He therefore prayed for recalling the ex parte order restoring the original appeal giving the assessee an opportunity to argue his case in the interest of justice.

6. In view of the above, we find that firstly there is no delay in terms of Rule 24 and 25 of the Income Tax (Appellate Tribunal) Rules,1963 in seeking to recall the exparte order passed in the impugned appeal and even if so held the assessee has adduced sufficient cause for the same, being the mistake of his counsel who failed to take note of the amendment in law, brought about a few months prior to the passing of the order by the Ld.CIT(A) ,restricting the time period for filing of rectification applications before us from four years to six months..And keeping in mind the small background of the assessee and the huge additions made to his income, punishing him in the shape of tax liability by not recalling the earlier order dismissing his appeal is highly disproportionate to the negligence of the assessee in the delay in filing the present application. And therefore taking a sympathetic view we deem it appropriate to even otherwise condone the delay. We draw support from the order of the coordinate bench of the ITAT in the case of Gaurav Vinod Bhai Mitra vs ITO in ITA No.641/Ahd/2019 dated06/12/2021,where the delay in filing appeal before the Ld.CIT(A) of 26 months was condoned holding as under:

> *10. We have considered rival submissions, and gone through the material available on record. Expression "sufficient cause" employed in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld.Commissioner to condone the delay in filing the appeal before him, has also been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as*

before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

> *"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 a 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 pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *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 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."*

11. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N.Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the*

damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that 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 Could 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."

12. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by

an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

7. Having held so and noting that the dismissal of the appeal was not on merits, in terms of Rule 24 of the ITAT Rules, 1963, therefore we recall the order passed, restoring the appeal to its original position to be fixed for hearing on 25/05/2022.

8. Application of the assessee is allowed.

Order pronounced in the open court on 21 -04-2022

Sd/-	**Sd/-**
(MADHUMITA ROY)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER True Copy	**ACCOUNTANT MEMBER**
Ahmedabad: Dated 21/04/2022	

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय
अधिकरण,
अहमदावाद