

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.102/Bang/2021
Assessment year : 2014-15

Shri Ravindra Kumar Sethia, No.5, Mysore Road Cross, Nayandahalli Post, Devavatige, Mysore Road, Devatige Ramanahalli, Bangalore – 560 039. PAN: AEFPS 4106L	Vs.	The Income Tax Officer, Ward 3(2)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Prathiba R., Advocate
Respondent by	:	Shri Kannan Narayanan, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.07.2021
Date of Pronouncement	:	23.07.2021

ORDER

Per Chandra Poojari, Accountant Member

The assessee filed early hearing petition dated 12.7.2021 seeking early hearing of the appeal. During the course of hearing this petition, we noticed that the issue in dispute is with regard to condonation of delay by the CIT(Appeals) due to which he dismissed the appeal of assessee as unadmitted since there was a delay of 40 days in filing the appeal before the CIT(A). Hence we proceeded to hear and adjudicate the appeal itself, instead of early hearing.

2. The facts of the case are that the assessee filed appeal belatedly by 40 days before the CIT(Appeals) challenging the penalty order of the AO u/s. 271(1)(c) of the Income-tax Act, 1961 [the Act]. The assessee filed petition for condonation of delay along with affidavit before the CIT(A) explaining the reasons for the delay. The CIT(A) dismissed the appeal on the reason that there was no sufficient or good reason for the delay in filing the appeal by 40 days. Against this, the assessee filed the appeal before the Tribunal.

3. However, there is a delay of 688 days in filing the appeal before the Tribunal also. The Id. AR has filed petition for condonation of delay along with affidavit of Shri Manoj Kumar Moyal, CA as follows:-

“Do hereby solemnly affirm and state as follows:

1. I am the authorised representative CA for the Appellant herein and as such being conversant with the facts of the case, I swear to this affidavit.

2. The above Income tax appeal is filed against the order of the Commissioner of Income Tax (Appeals), dated 05.03.2019. The said order was served on the appellant on 06.03.2019 and accordingly the appeal should have been filed on or before 05.05.2019. However, the appeal was filed on 23.03.2021 vide ITA No. ITA 102/BANG/2021 causing a delay of 689 days. The reason for the delay is explained below:

3. The order of CIT(A) was received by me. Meanwhile, my Grand-Father was suffering from age related illness and later, he had passed away on 08.05..2019. Later, my father was facing critical health issues and it was necessary for me to take care of him. His health condition required my constant attention and visits to doctors and hospitals on a regular basis and later he also passed away on 09.01.2020 and I was totally disturbed and could not concentrate on my work. Further, the Appellant had contacted me but I could not advise him to go for an appeal. Further, due to COVID-19 pandemic the lockdown was imposed and I was unable to look into the matter of appeal and thereby I did not file

the appeal within the time-limit prescribed. Later, I advised them to go for appeal before the Hon'ble ITAT and my colleague has drafted the appeal and the appeal is filed.

Accordingly, this appeal is filed before the Hon'ble Tribunal without further loss of time and the delay of 689 Days in filing the appeal is only on account of a reasonable cause as aforesaid.

Accordingly, it is prayed that the delay may kindly be condoned and appeal may kindly be admitted and disposed of on merits.”

4. In our opinion, the reasons for delay pointed out by the Id. AR is sufficiently explained that assessee handed over the appeal papers to the CA. Meanwhile his grandfather was ill and passed away on 8.5.2019. Later, his father was in critical condition who expired on 9.1.2020. After that there was Covid 19 pandemic which resulted in delay in filing the appeal before the Tribunal. In our opinion, there is reasonable cause in the reasons explained by the Id. AR for the delay in filing the appeal before the Tribunal. Accordingly, by placing reliance on the decision of *Collector, Land Acquisition v. Mst. Katiji, 167 ITR 471 (SC)*, we condone the delay in filing the appeal before the Tribunal and admit the appeal for adjudication.

5. Now the question is that there was a delay of 48 days in filing the appeal before the CIT(Appeals) which was not condoned by the CIT(Appeals). The Id. AR explained the reasons for delay in filing the appeal before the CIT(Appeals) that the assessee's wife Smt. Sarla was sick and hospitalized w.e.f. 20.3.2017 to 28.3.2017. The assessee was required to file the appeal before the CIT(Appeals) on or before 6.7.2017. After hospitalization, the assessee's wife required repeated medical treatment wherein the assessee was fully engaged in taking care of her. We are of the opinion that the delay in filing by the appeal before the CIT(Appeals) has to be condoned. This Tribunal in ITA Nos.2787 to 2792/Bang/2018 (SMC Bench) in the case of *The Graduates Co-operative Society Ltd.* considered this issue and vide order dated 21.12.2018 while

considering condonation of delay of 383 & 402 days delay in filing the appeals held as under:-

“8. I have given a careful consideration to the rival submissions. At the outset, I observe that the Hon’ble Supreme Court, in the case of Mst. Katiji (supra), has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon’ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day’s delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. In the case of Shakuntala Hegde, L/R of R.K. Hegde v. ACIT, ITA No.2785/Bang/2004 for the A.Y. 1993-94, the Tribunal condoned the delay of about 1331 days in filing the appeal wherein the plea of delay in filing appeal due to advice given by a new counsel was accepted as sufficient. The Hon’ble Karnataka High Court in the case of CIT v. ISRO Satellite Centre, ITA No. 532/2008 dated 28.10.2011 has condoned the delay of five years in filing appeal before them which was explained due to delay in getting legal advice from its legal advisors and getting approval from Department of Science and PMO. In the aforesaid decision, the Hon’ble Court found that the very liability of the assessee was non-existent and therefore condoned the delay in filing appeal. Keeping in mind the aforesaid principles, I shall consider the claim of the assessee in the present case.

9. Admittedly, the delay was due to advice given by the counsel who appeared on behalf of the Assessee before the AO and CIT(A) not to file appeal and on advice from a professional from a new statutory auditor appointed for FY 2017-18, to file appeals, the appeals were filed. I find that there has been no willful neglect on the part of the Assessee. In such matters the advice of the professional would be the point of time at which the Assessee would begin to explore the option of exhausting all legal remedies. I am also of the view that by condonation of delay there is no loss to the revenue as legitimate taxes payable in accordance with law alone would be collected. I therefore accept

the reason given for condonation of delay in filing the appeals.
The delay in filing the appeals is accordingly condoned.”

6. In our opinion, in the present case there was sufficient reason for the delay in filing the appeal by 40 days before the CIT(Appeals). Accordingly, we condone the delay in filing the appeal before the CIT(Appeals), Since the CIT(Appeals) has not decided the issue on merits, we are inclined to remit the issue to the file of CIT(Appeals) for fresh consideration and decision on merits in accordance with law.

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

Pronounced in the open court on this 23rd day of July, 2021.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd July, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.