

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.262/Bang/2019
Assessment Year: 2013-14

Harpal Singh No.144, 1 st Main Road 11 th Cross, Ideal Homes Rajarajeshwari Nagar Bengaluru-560 098 PAN NO : AFKPS1542J	Vs.	ACIT Circle-3(2)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar & Shri Pranav Krishna, A.Rs
Respondent by	:	Shri Priaydarshi Mishra, D.R.

Date of Hearing	:	22.10.2020
Date of Pronouncement	:	22.10.2020

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 18.12.2018 passed by Ld. CIT(A)-3, Bengaluru and it relates to assessment year 2013-14.

2. We heard the parties and perused the record. We notice that there was a delay of 451 days in filing the appeal by the assessee before Ld. CIT(A). Hence, the Ld. CIT(A) has dismissed the appeal without condoning the delay by observing that there exists no sufficient or good reason for condoning inordinate delay of 451 days

in filing appeal before him. The Ld. CIT(A) has taken support of decision rendered by Hon'ble Supreme Court in the case of Ramlal Vs. Rewa Coalfields Ltd. AIR 1962 SC 361 and also the decision rendered in the case of Chief Post Master General and Others Vs. Living Media India Pvt. Ltd. (2012) 348 ITR 7. He also taken the view that the above said delay is an inordinate delay.

3. The Ld. Counsel submitted that the relevant documents were submitted by the assessee to his auditor and in turn the auditor sought for a opinion from tax advocate. The papers were misplaced in the advocate's office and hence the appeal could not be filed in time. Accordingly, he submitted that there was no wilful default and the delay has occurred due to reasons beyond the control of the assessee. He further submitted that the assessee would be put to irreparable loss if the appeal is not decided on merits. Accordingly, he prayed that the delay in filing appeal before Ld. CIT(A) may be condoned.

4. On the contrary, Ld. D.R. who strongly supported the order passed by Ld. CIT(A).

5. We notice that the assessee has given following explanation with regard to the delay in filing the appeal.

I am an individual and for the A.Y. 2013-14 I received the assessment order on 29.3.2016. The due date for filing the appeal was 28.4.2016 whereas the appeal was filed on 26.7.2017. Thus there is a delay of 1 year and 3 months.

The assessment order was served on me and immediately I had handed over the papers to my auditor Sri Venkatesulu Adike for further advice. The auditor had sought for an opinion from tax advocate. The papers were misplaced in the advocate's office. Hence the appeal could not be filed within the time. The auditor got the papers back from the tax advocate and sought for an advice with another advocate who advised me to file an appeal and finally the appeal was filed on 26.7.2017.

In the above circumstances the delay is not due to my negligence, and it is bonafide and hence it is prayed the delay may kindly be condoned and appeal may be admitted and disposed of on merits in the interest of justice.”

6. We notice that the assessee has furnished explanation for the delay in filing appeal before Ld CIT(A). In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others (167 ITR 471(SC), the Hon'ble Supreme Court has observed as under:-

“ 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".

7. 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.

8. From the explanations furnished by the assessee, we are of the view that it cannot be said that there was gross negligence or deliberate inaction or lack of bonafides in it. Accordingly, in the interest of natural justice, we are of the view that the delay in filing appeal before Ld CIT(A) deserves to be condoned. Accordingly, we condone the delay in filing appeal before Ld CIT(A).

9. Since the Ld CIT(A) has not disposed the grounds urged in the appeal, we restore the appeal to his file for adjudicating all the grounds.

10. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 22nd Oct, 2020

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 22nd Oct, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.