

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.376/SRT/2024**

(Physical Hearing)

| | | |
|---|------------|-----------------------------------|
| Sri Ram Mandir Katargam, Opp. Katargam Police Station Nr. Bus Stand, Katargam Main Road, Surat – 395004, Gujarat | Vs. | The CIT (Exemption), Ahmedabad |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AALTS0597F | | |
| (Appellant) | | (Respondent) |

| | |
|------------------------------|------------------------------|
| Appellant by | Shri Rasesh Shah, CA |
| Respondent by | Shri Aashish Pophare, CIT-DR |
| Date of Hearing | 17/05/2024 |
| Date of Pronouncement | 27/05/2024 |

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal emanates from the order dated 16.09.2022, passed by the Learned Commissioner of Income-tax (Exemption), Ahmedabad [in short, "Ld. CIT(E)"], wherein the Ld. CIT(E) rejected assessee's application for registration of trust u/s 12AB of the Income-tax Act (in short, 'the Act') and also cancelled the provisional registration.

2. This appeal is delayed by 506 days. The assessee-trust has filed affidavit for condonation of delay in filing of appeal before this Tribunal. In the affidavit, it has been stated that the application of registration of assessee-trust was rejected by the Ld. CIT(E). In the Form No.36, the date of order and date of service of order was mentioned the same on the

presumption that the order was sent by the Ld. CIT(E) to the registered E-mail ID of the assessee-trust on the same date. The receiver of the assessee-trust had not opened the E-mail ID where the order was delivered. Shri Umesh Shah, CA of the assessee-trust found from ITBA portal that the assessment order was passed on 5.03.2024 for assessment year 2022-23. On further checking the status of application for the registration of the assessee-trust, it was found that the same was rejected by Ld. CIT(E). If the date of downloading the said order is considered, there is no delay in filing the present appeal. It is also stated that in the affidavit that the assessee is an old trust who was granted registration u/s 12A on 30.03.1997, hence there cannot be malafide intention to file appeal belatedly. It is also stated that exemption u/s 11 was granted to the assessee in the past and therefore the delay in filing the appeal was not intentional and assessee was prevented by sufficient and reasonable cause for not filing the appeal in time. It is also mentioned that the CBDT has extended the time limit for filing the application for registration u/s 12A and approval u/s 80G till 30.06.2024 vide Circular No.7/2024, dated 25.04.2024. Accordingly, no prejudice would be caused to the assessee because of the benevolent circular.

3. The Learned Authorized Representative (Ld. AR) of the assessee submitted that the assessee has explained that there was sufficient cause for not filing the appeal in time, which is evident from the affidavit filed by

the assessee. He referred to CBDT Circular No.7/2024, dated 25.04.2024 which has extended time limit for filing application for registration till 30.06.2024 and argued that no prejudice would be caused because of this benevolent circular. He relied upon the decisions in the cases of **(i) Collector, Land Acquisition vs. Mst. Katiji (1987) 1987 taxmann.com 1072 (SC)**, **(ii) Jayvantsinh N. Vaghela vs. ITO, 40 taxmann.com 491 (Guj.)**, **(iii) Naveen Kishor Mohnot vs. ITO, 152 taxmann.com 658 (Mum – Trib.)**, **(iv) Satyadeo Prasad Shaw, C. R. R. 1299 of 2022 with CRAN 1 of 2022**, **(v) Ahmednagar Cancer Society vs. CIT(E), ITA No.1192/Pun/2023.**

4. On the other hand, Learned Commissioner of Income Tax - Departmental Representative (Ld. CIT-DR) for the Revenue opposed the prayer of the assessee for condonation of delay. The Ld. CIT-DR stated that the reasons given by the assessee in the affidavit would not constitute “sufficient cause” for the purpose of condoning the delay. The delay is not for a short period but it is for a very long period of 506 days. From the affidavit, it is clear that the assessee was inactive, negligent and casual in pursuing the impugned application before the Ld. CIT(E). After filing the application, he never followed up the same. Hence, there was no sufficient cause for the delay. The Ld. CIT-DR for the Revenue relied on the judgment of the Hon`ble Supreme Court in the case of **Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors.**, in Civil Appeal No.7696 of 2021, dated 16.12.2021.

5. We have heard both the parties on this preliminary issue of condonation of delay. In the affidavit, the assessee has stated that the delay was caused because the e-mail was not opened by the receiver of the e-mail ids. The CA logged in ITBA portal to check the assessment order passed for AY.2022-23. It was found by him that the assessment order was passed on 05.03.2022. Thereafter, the CA **also** checked the status of the application for registration on the ITBA portal and found that the registration application has already been rejected by the Ld. CIT(E). Such order of rejection was downloaded by the CA on 05.03.2022 and if the date of filing is reckoned from the above date, there is no delay. It is further stated that the assessee is a very old trust and was given registration u/s 12A on 13.03.2021. It is stated that there was no malafide intention to file belatedly. It is also stated that the delay was not intentional and assessee was prevented by reasonable cause for not filing the appeal in time.

6. On the other hand, learned Commissioner of Income Tax – Departmental Representative (Ld. CIT-DR) for the Revenue stated that the reasons given by the assessee would not constitute “sufficient cause” within the meaning of section 253(5) of the Act. He has relied on the decision of Hon'ble Supreme Court in case of **Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors (supra)**. After considering the submissions of the Ld. AR and the objection by the Ld. CIT-DR, we find that the primary reason given by the assessee for the delay is that the Chartered Accountant came to know

about the rejection of the application only while checking the status of assessment order for AY.2022-23. Had he not verified the status of the assessment order for AY.2022-23; he would not have found the order of rejection of the application for registration. It has simply slept over the matter after filing the application. Such a simple and general reason given by the applicant would not constitute "sufficient cause" for not presenting the appeal within the specified period. It is clear from the affidavit that though the assessee is an old trust, it was negligent, inactive and not diligent in pursuing the issue relating to approval of application and filing of appeal within specified time after rejection of the application for registration.

7. Against the above factual background, let us now discuss the decisions relied upon by both sides. The Ld. CIT-DR has relied upon the decision of Hon'ble Supreme Court in the case of ***Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors (supra)***. In the said case, a delay of 1011 days was condoned by the Hon'ble High Court by observing that there was no willful negligence nor it suffered from want of diligence. The Hon'ble Supreme Court has not upheld the order of the Hon'ble High Court. While considering the issue against this order, the Hon'ble Supreme Court referred to its own cases in ***(i) Ramlal, Motilal and Chhotelal vs. Rewa Coalfields Ltd. (1962) 2 SCR 762, (ii) P. K. Ramachandran vs State of Kerala & Anr. (1997) 7 SCC 556, (iii) Pundik Jalam Patil vs. Executive Engineers, Jalgaon Medium Project, (2008) 17 SCC 448 and (iv) Basawaraj and Anr. vs. Special Land***

Acquisition Officer, (2013) 14 SCC 81. The respondent had argued in above case of **Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors** (supra) that if the delay is condoned, the appeal will be considered and decided on merit and therefore, no prejudice would be caused to the assessee. The Hon'ble Supreme Court has not accepted such a view. It has reproduced the decision of the Hon'ble High Court at "Para 6" of the order. In the decision, the Hon'ble High Court stated that *"if delay is condoned though enormous, what happens at best is to give an opportunity to the parties to canvass their respective case. Since, this question being of procedure, the attempt of the court should be to encourage a healthy discussion on merits than rejecting at threshold."* It also held that there was no willful negligence or want of due diligence. The Hon'ble Supreme Court was not satisfied with the reasons of the Hon'ble High Court. It was of the opinion that it was a case of gross negligence and want of due diligent on the part of the respondent. There was no sufficient explanation for the delay in filing the appeal. The Hon'ble Supreme Court thereafter relied on its own earlier decisions cited supra where the conduct of the parties in preferring appeals beyond the time prescribed has not been approved by the Hon'ble Supreme Court. In various cases, it has been observed that in absence of reasonable and satisfactory cause or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly.

7. In the case of **P. K. Ramachandran** (supra) it was observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribes and the court have no power to extend the period of limitation on equitable grounds.

8. The Hon'ble Supreme Court referred to its decision in case of **Basawaraj** (supra) wherein it was observed and held by the Court that discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It also observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fide is attributed to the party. It is further observed that in case a party acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions.

9. The Hon'ble Supreme Court also referred to the decision in the case of **Pundik Jalam Patil** (supra) wherein the Hon'ble Court observed that it cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "*do not slumber over their rights.*"

10. Applying the law laid down by this Hon'ble Supreme Court in these cases, it was held that the Hon'ble High Court has not exercised the discretion judiciously in condoning the huge delay of 1011 days in preferring

the appeal by respondent. The order of Hon'ble High Court was found to be unsustainable, both on law as well as on facts.

11. The Ld. AR of the assessee has relied upon the decision of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition vs. Mst. Katiji** (supra). In the said case, there was delay of only 4 days. The Hon'ble Supreme Court in the above case held that “*when substantial justice and technical considerations 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.*” This decision was pronounced on 19.02.1987.

12. However, we find that in the subsequent decisions namely (i) **P. K. Ramachandran vs State of Kerala & Anr. (1997) 7 SCC 556**, (ii) **Pundik Jalam Patil vs. Executive Engineers, Jalgaon Medium Project, (2008) 17 SCC 448** and (iii) **Basawaraj and Anr vs. Special Land Acquisition Officer, (2013) 14 SCC 81**, (iv) **Pathapati Subba Reddy (dies) By L. Rs. & Ors. Vs The Special Deputy Collector (LA), SLP(C) No.31248 of 2018 (SC), dated 08.04.2024**, it was held that condonation of delay should not be granted only on the ground that ordinarily a litigant does not stand to benefit by lodging an appeal late.

13. The Hon'ble Supreme Court in the case of **Basawaraj** (supra), held that it is a settled legal position that Article 14 of the Constitution is not meant to perpetuate the illegality or fraud, even by extending the wrong

decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. If some similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. If an illegality or irregularity has been committed in favour of an individual or a group or a wrong decision has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. The Hon'ble Court summarized the law on the subject issue by stating that where a case has been presented in the Court beyond limitation of time, the applicant has to explain as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within the limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

14. We find that in a very recent decision pronounced on 28.04.2024, in the case of ***Pathapati Subba Reddy (dies) & Ors. Vs. The Special Deputy Collector (LA)*** (supra), the Hon'ble Supreme Court referred to and discussed various decisions of Hon'ble Supreme Court, namely ***(i) Bhag Mal (Alias) Ram Bux & Ors vs. Munshi (Dead) by LRs & Ors (2007) 11 SCC 285 (SC)***, ***(ii)***

Collector, Land Acquisition vs. Mst. Katiji (supra) (iii) Ramlal, Motilal and Chhotelal vs. Rewa Coalfields Ltd. (supra), (iv) Maqbul Ahmad and Ors vs. Onkar Pratap Narain Singh and Ors, AIR 1935 PC 85 (SC) (v) Brijesh Kumar and Ors vs. State of Haryana and Ors. 2014 (4) SCALE 50 (vi) Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors, (2011) 4 SCC 363 (vii) State of Jharkhand & Ors vs. Ashok Kumar Chokhani & Ors. AIR 2009 SC 1927 (viii) Basawaraj and Ors (supra) and held as under:

“7. The law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium” i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.”

15. It has also discussed the case of **Collector, Land Acquisition vs. Mst. Katiji** (supra) relied upon by Ld. AR, and held that the phrases “liberal approach”, “justice-oriented approach” and “cause of advancement of substantial justice” cannot be employed to defeat the law of limitation. For ready reference of equality, the same is reproduced hereunder:

“16.In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors., this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day’s delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice- (1987) 2 SCC 107 = AIR 1987 SC 1353 oriented approach’ and cause

for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of [Section 5](#) of the Limitation Act."

16. After discussion of various cases in its order, the Hon'ble Supreme Court at Para 26 has summed up the law laid down by it as under:

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law [laid down by](#) this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the [Limitation Act](#) have to be construed differently, such as [Section 3](#) has to be construed in a strict sense whereas [Section 5](#) has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in [Section 3](#) of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

17. The Hon'ble Supreme Court refused to interfere with the decision of the Hon'ble High Court refusing to condone the delay in filing the appeal.

18. The facts and circumstances of the present case are similar. The assessee has filed the appeal after an inordinate delay of 506 days. The reason given is that while checking fate of the assessment order, the CA **also** checked the status of application for registration and found that the application has been rejected. It means that the assessee was primarily concerned about the fate of assessment order. The CA **also** checked the fate of the application filed for registration while checking the assessment order. It is thus crystal clear that after filing the application, it had remained inactive and negligent. There was no due diligence on the part of the assessee. This fact shows the lackadaisical attitude of the assessee towards the registration of the trust and subsequent follow up action indulging filing of appeal. Such casual, indifferent and lackadaisical approach towards the order of rejection of registration cannot constitute “sufficient cause” within the meaning of section 253(5) of the Act. In view of the above facts and respectfully following the authoritative precedents cited supra, we refuse to condone the delay, requested by the assessee.

19. Since, delay has not been condoned, it becomes academic in nature to discuss the merit of the case. Hence, the other grounds are not discussed. However, the assessee has also requested that the benevolent Circular No.7/2024, dated 25.04.2024 issued by the CBDT to extend the time limit for filing the registration under section 12A till 30.06.2024 may be considered. The assessee is at liberty to make application and seek

appropriate relief as per the Circular issued by CBDT from the Ld. CIT(E). The Ld. CIT(E) may examine the application of the assessee to see if it is covered by the Circular and decide the matter in accordance with law and the CBDT Circular.

20. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 27/05/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 27/05/2024

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat