

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.931 & 932/Bang/2024
Assessment years : 2009-10 & 2011-12

Chief Officer, Town Municipal Council Malebennuru, Secretary Grampanchayat, Malebennur – 577 530. Harihar Taluk. Davangere Dist. TAN : BLRS16837C	Vs.	The Income Tax Officer, TDS Ward, Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Shri Subramanian S., Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.06.2024
Date of Pronouncement	:	03.07.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These appeals are filed by the assessee against the common order dated 29.02.2024 of the CIT(Appeals)-11, Bangalore for the AYs 2009-10 & 2011-12 respectively on identical issue of non-condonation of delay in filing the appeals and dismissing the appeals.

2. The brief facts of the case are that a survey was conducted u/s. 133A of the Act on 05.03.2015 to verify the compliance of TDS

provisions on certain payments as per Receipt & Payment account which is incorporated by the AO in his order. The assessee is a Gram Panchayat (Town Municipal Corporation), a State Govt. Organization, carrying out the main functions of Government Schemes like Ashraya Scheme, Indira Awas Yojana, etc. The documents were called for and it was noticed that assessee was required to deduct TDS u/s. 194C on the total payments under different heads. During the assessment proceedings, part reply was submitted by the assessee. The AO noted that it is admitted fact that TDS has not been deducted and accordingly assessee was treated as assessee in default and total tax and interest was calculated at Rs.1,83,577/- and Rs.24,33,551 for both the years respectively. Aggrieved from the above orders, the assessee filed appeal before the CIT(Appeals).

3. The Id. CIT(Appeals) noted that the date of filing of appeal as under:-

AY	Order passed by AO u/s	Appeal No.	Date of service as per Form 35	Limitation for filing of appeal	Date of filing	Delay in days
AY 2009-10	201(1) & (1A) dtd. 31.03.2016	NFAC/2007-08/10052533	31.03.2016	31.04.2016	22.10.2021	2000 days
AY 2011-12	201(1) & (1A) dtd. 27.03.2018	NFAC/2009-10/10053099	02.04.2018	02.05.2018	22.10.2021	1269 days

4. The assessee filed affidavit explaining the reason for delay in filing the appeals. However, the Id. CIT(Appeals) did not accept it and observed that the reasons provided does not explain the day to day delay and it was incumbent upon the assessee to exhibit due diligence in explaining the day to day delay. Accordingly the delay of over 5.4

years and 3.4 years in both the appeals was not condoned after relying on various judgments and the appeals were dismissed. Aggrieved, the assessee is in appeals before the ITAT.

5. The Id. AR submitted that the Id. CIT(Appeals) is not justified in prima facie not accepting the reasons and not condoning the delay. He dismissed the appeals without going into merits of the case. He further submitted that the assessee is situated in a very remote area where there is no professional advice available and there is also lack of staff for proper handling of income tax matters. The assessee is discharging huge task of implementing various basic amenities and day to day services to general public at large. There was transfer of concerned Officer. The assessee has no intention to jeopardize the interest of the revenue by delaying filing of appeal. In support of his arguments he relied on the coordinate Bench decision in the case of Child Development Project Officer in ITA No.882 to 890/Bang/2013, order dated 09.01.2024.

6. The Id. DR submitted that assessee is a State Govt. department and should have been aware of Rules & Regulations for running the office and whether it is located in rural or urban area is irrelevant. The Govt. Officer has to discharge duties with due diligence. But this is clear case of negligence and appeal should have been filed within the due date prescribed under the Act. The Id. CIT(A) has passed a good reasoned order and it should not be disturbed.

7. Considering the rival submissions, we note that a survey was conducted and it was noted that assessee was required to deduct TDS u/s. 194 on the payments made as set out in the assessment orders and picked out from the Receipt & Payment account of the assessee. The ld. AR submitted that some of these payments are not covered by provisions of section 194C and the amount considered by the AO is the year ending figure. We also note that the assessee has filed appeal before CIT(Appeals) much after the due date and the CIT(A) has not condoned the delay stating that there is no reasonable cause set out by the assessee.

8. In case of People Education & Economic Development Society Vs. ITO reported in 100 ITD 87 (TM) (Chen), it was held that;

"when substantial justice and technical consultation 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 non-deliberate delay".

9. 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 assessee was a reasonable cause for not able to file the appeals within the period of limitation. The cause for the delay therefore deserves to be considered, when there exist a reasonable cause, and therefore the period of delay may not be relevant factor. In support, we rely on the decision of Hon'ble Madras High Court in the case of CH 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. Hon'ble Madras High Court thus condoned nearly 21 years of delay in filing the appeal. As compared to 21 years, delay of about 1000 to 2000 days cannot be considered to be inordinate or excessive.

10. Hon'ble Madras High Court in the case of Sreenivas Charitable Trust reported in 280 ITR 357 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 Hon'ble 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. 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 opinion of this *Tribunal*, this decision of *Hon'ble Madras High Court* is applicable to the present facts of the case. A similar view was taken by *Hon'ble Madras High Court* in the case of *Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad)*.

11. Hon'ble Mumbai Bench of this Tribunal in the case of *Bajaj Hindusthan Ltd. v. Jt. CIT (AT)* reported in 277 ITR 1 condoned the

delay of 180 days when, the appeal was filed after the pronouncement of the Judgment of the *Hon'ble Supreme Court*. It is also to be noted that the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. *Hon'ble Supreme Court* in the case of *Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi* reported in *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 application of the assessee, therefore, as held by *Hon'ble Supreme Court*, there is sufficient cause for condonation of delay. *Hon'ble Supreme Court* also observed that; *"It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. 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 appeal within the period of limitation, the delay deserves to be condoned, irrespective of the duration/period."*

12. With the above observations, following the above judgments, in our considered opinion, there exists sufficient cause in the reasons stated by the assessee for the delay in filing appeals and we condone the delay in filing both the appeals before the CIT(Appeals).

13. In this case the AO has computed TDS u/s. 194C on the year end figure from Receipt & Payment account of assessee which is not

correct. He should have examined each and every payment whether it is covered under TDS provisions or not. In the interest of justice, we remit the common issue in both the appeals to the AO for fresh consideration and decision as per law. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating its case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

14. In the result, the appeals by the assessee are allowed for statistical purposes.

Pronounced in the open court on this 03rd day of July, 2024.

Sd/-

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 03rd July, 2024.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.