

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 640/KOL/2024
Assessment Year: 2023-2024**

**Seva Bharati,..... Appellant
Rampur Bankura, Bankura-722101,
West Bengal, India
[PAN: AAVTS1953R]**

-Vs.-

**Commissioner of Income Tax
(Exemption),.....Respondent
Kolkata,
10B, Middleton Row, Kolkata-700071**

Appearances by:

*Shri Sumantra Sarathi Mahata, A.R., appeared on behalf of
the assessee*

*Shri Subhendu Datta, CIT, D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : June 20, 2024

Date of pronouncing the order : July 03, 2024

ORDER

Per Dr. Manish Borad, Accountant Member:-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Exemption), Kolkata dated 30th May, 2023 passed for A.Y. 2023-24.

2. The Registry has pointed out that appeal is time barred by 243 days. In order to explain the delay, Shri Subrata Das, Secretary of the assessee-Trust has filed an affidavit dated 27.03.2024. The stand of the Secretary, assessee-Trust is that the erstwhile Secretary Shri Mohan Chatterjee, aged about 78 years is unable to move his arms due to old age and unable to checked the departmental communication in time and lack of communication with him due to his old age as well as not accustomed to use e-mail and other electronic devices, the appeal could not be filed within the due time and prayed before the Tribunal for condoning the delay of 243 days.

3. We find merit in the contention of the ld. Counsel for the assessee and are of the view that there was sufficient reason, for which the assessee was restrained from filing the appeal before this Tribunal within the statutory time limit. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically 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 the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for

consideration before Honble High Court as well as before the Honble Supreme Court, then, Honble 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 Supremecourt 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.

4. Similarly, we would like to make reference to authoritative pronouncement of Honble 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 Court should not forget the opposite party altogether. It must be borne in mind that he is a loser 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".

5. 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 Honble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the condonation of delay, then such reasons are to be construed with a justice oriented approach.

6. In the light of the above, we are of the view that while making this appeal time barred, the assessee will not gain anything. The delay has not been adopted by the assessee as a strategy to litigate with the Revenue. The delay is the result of human lapses and we find merit in the contention of the ld. Counsel for the assessee and are of the view that there was sufficient reason, which the assessee was restrained from filing the appeal before this Tribunal within the statutory time limit. Therefore, in the interest of justice, we condone the said delay of 243 days and admit the appeal for adjudication on merit.

7. The only issue raised by the assessee is that the ld. CIT(Exemption) erred in rejecting the application of the assessee filed in Form 10AB for final approval under section 80G(5)(iii) of the Income Tax Act.

8. At the outset, ld. Counsel for the assessee submitted that the application filed by the assessee was rejected on account of being barred by limitation. The assessee furnished application on 01.11.2022, but ld. CIT

(Exemption) has treated it as non-maintainable since the extended due date of CBDT was only 30th September, 2022. Ld. Counsel for the assessee referring to the recent Circular of CBDT dated 25.04.2024 stated that the due date for filing from 10A/10AB has now been extended upto 30th June, 2024 and, therefore, now the application of the assessee filed on 01.11.2022 is well within the prescribed time limit and same should be admitted by ld. CIT(Exemption) for necessary adjudication and granting of approval under section 80G(5)(iii) of the Income Tax Act.

9. On the other hand, ld. D.R. did not oppose the same.

10. We have heard the rival contentions and gone through the record carefully. We observe that the assessee is a Charitable Organization and provisionally enjoying registration under section 12A and has also been granted provisional registration under section 80G(5)(iii) on 15.03.2022. Application for approval under section 80G(5)(iii) was filed on 01.11.2022 duly filled in Form 10AB. The ld. Assessing Officer treated the same as non-maintainable on the ground that CBDT vide its Circular bearing No. 6 of 2023 dated 24th May, 2023 has extended the date of filing new application in Form 10AB upto 30.09.2022. We, however, on perusal of the recent Circular dated 25.04.2024 issued by the CBDT find that the due date for filing Form 10A/10AB has now been

extended upto 30.06.2024. Since the assessee's application was filed on 01.11.2022, the same is before the extended due date by 30.06.2024 issued by CBDT. Under the given facts and circumstances, we direct the ld. CIT(Exemption) to admit the assessee's application in Form 10AB and grant approval under section 80G(5)(iii) in accordance with law.

11. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 03.07.2024.

Sd/-
(Rajpal Yadav)
Vice-President
Kolkata, the 3rd day of July, 2024

Sd/-
(Manish Borad)
Accountant Member
Kolkata, the 3rd day of July, 2024

*Copies to :(1) Seva Bharati,
Rampur Bankura, Bankura-722101,
West Bengal, India*

*(2) Commissioner of Income Tax (Exemption),
Kolkata,
10B, Middleton Row, Kolkata-700071*

*(3) CIT-
(4) The Departmental Representative
(5) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.