

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER
&
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 105/MUM/2024 (A.Y: 2012-13)**

Mr. Naresh Topandas Aidasani
415, Arneja Corner, Sector 17,
Vashi, Navi Mumbai – 700 705
PAN: ADYPA6970A

(Appellant)

Vs. Dy. CIT 27(2), Mumbai
4th Floor, Tower No. 6, Near
Vashi Railway Station,
Commercial Complex, Vashi
Navi Mumbai – 400 705.

(Respondent)

Assessee Represented by	:	Shri. Jignesh R. Shah
Department Represented by	:	Shri. Sunil Shinde, Sr. AR.
Date of conclusion of Hearing	:	13.05.2024
Date of Pronouncement	:	29.07.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 06.12.2023 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y. 2012-13, wherein the



appeal filed by the assessee was dismissed being barred as condonation of delay was not allowed by the Ld. CIT(A).

2. The facts in brief are that the assessee filed his return for the A.Y. 2012-13 on 30.09.2021 at an income of Rs. 94,93,703/-. The case was selected for scrutiny and notice u/s. 143(2) of the Act was issued and duly served upon the assessee and subsequently notice u/s. 142(1) of the Act was also issued and duly served upon the assessee. The Ld. AO finalize the assessment proceedings by making addition to the tune of Rs. 58,44,389/- and has assessed at Rs. 1,53,38,090/-. The Ld. AO also initiated penalty proceedings u/s. 271(1)(c) of the Act on the ground that the assessee has furnished inaccurate particulars of his income. The assessee filed appeal against the assessment order, the Ld. CIT(A)-26, Mumbai vide order dated 23.09.2019 allowed the appeal of the assessee against the addition of Rs. 1,76,094/-.

3. During the appeal effect order of the quantum appeal the penalty proceedings were initiated. In the meantime, Faceless Penalty Scheme, 2021 was launched on 12.01.2021, accordingly, the penalty proceedings were transferred to the Regional Faceless Penalty Center. The National Faceless Assessment Centre, Delhi therefore imposed minimum penalty



of Rs. 17,51,503/- u/s. 271(1)(c) of the Act and the approval of the Ld. Addl. CIT Delhi was also obtained as per Section 274(2) of the Act.

4. That penalty order dated 28.02.2022 for the A.Y. 2012-13 was challenged before the Ld. CIT(A) who by order dated 06.12.2023 i.e., the impugned order has dismissed the appeal while refusing to condone the delay and application for seeking condonation of delay was dismissed. It is against that the order of the Ld. CIT(A) dated 28.02.2023, the assessee is before us in appeal and has raised the following summarized/brief grounds in appeal as under:

- a. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in rejecting the Appellant's application for condonation of delay in filing the appeal without affording the Appellant any opportunity of being heard at all and without appreciating in right perspective the detailed application for condonation of delay and the affidavit filed by the Appellant and thereby violating not merely the express provisions of law contained in section 250 read with section 249(3) but also the fundamental principles of natural justice, conscience and good faith.



- b. Other grounds in the appeal relates to the imposing of the penalty and the penalty order has been challenged in these grounds on merit. Since the Ld. CIT(A) has not decided the appeal vide impugned order on merit and simply dismissed the same being barred by law. Hence, we will confine ourselves to the ground no. 1 which contains to the condonation of delay in filing the appeal before the Ld. CIT(A).
5. We have heard the Ld. AR of the appellant and Ld. DR for the respondent. The Ld. AR on behalf of the appellant submitted that the reasons for condonation of delay as submitted before the Ld. CIT(A) makes out a sufficient cause for condonation of delay because in support of those grounds an affidavit of Mrs. Pooja Ashanand Mishra who was looking after accounting work of the appellant was filed giving detailed reasons as to how the email intimating the penalty order was not noticed inadvertently due to huge number of emails being received by her on behalf of the appellant.
6. The Ld. DR on the other hand relied upon the judgment of the Ld. CIT(A) stating that the judgment is perfectly right and is based of cogent reasons



and the appellant has failed to show sufficient cause for condonation of delay, hence, there is no merit in the appeal.

7. We have considered the rival submissions made on behalf of the appellant as well as the respondent. Para 3 of the impugned order contains the ground for condonation of delay which were not considered by the Id. CIT(A) and the same are reproduced as under:

3. *“As per Form 35 filed by the appellant, the order u/s 271(1)(c) against which this appeal has been filed, was passed on 28-02-2022 and was received by the appellant along with the demand notice on the same day. Thus, the appeal before the CIT(A) was required to be filed by electronic mode within 30 days of receipt of the order and demand notice by the appellant. However, it is found that the appeal has been filed only on 14-04-2023 resulting in a delay of 380 days. The appellant has admitted this delay in Form 35 and has filed request for condonation of delay as under:*

“I am presenting before Your Honour my appeal under section 246A of the Act against the penalty order dated 28.02.2022 under section 271(1)(c) passed by the Assessing Officer, NFAC, Delhi (AO), for the assessment year 2012-13 imposing a penalty of Rs. 17,51,503. The impugned penalty order dated 28.02.2022 was received by an email on or around 28.02.022. The appeal against the same was to be filed within 30 days thereof in terms of section 249(2) of the Act. But I am presenting the appeal now. Admittedly, therefore, there is a delay in presenting this appeal before Your Honour, but the delay is unintentional and is due to sufficient causes beyond my control. I therefore hereby most humbly request Your Honour to exercise the powers and discretion conferred upon Your Honour under section 249(3) of the Act. condone the delay in filing this appeal. admit the appeal and dispose it of according to law.

I am running a proprietary business of sale of bitumen, petroleum products, steel, cement etc., road contractor for various Government Departments, Government Corporations and Private entities for the last many years. I am assessed to income-tax for a very long time and



my trackrecord with the Income-tax Department has been excellent. I have always been prompt and proactive in complying with all the requirements under the Act for all these years.

Kindly note that my email account on which the impugned penalty order dated 28.02.2022 was received is my business email account on which I receive dozens of emails everyday from various suppliers, Government Departments, etc. in respect of my business transactions with various Government Departments, and my email account is therefore handled by my staff by the name Mrs. Pooja Ashanand Mishra. To my misfortune, this email containing the impugned penalty order dated 28.02.2022 was, through inadvertence and oversight, omitted to be opened by my staff Mrs. Pooja Ashanand Mishra on the day It was received. Thereafter, unfortunately, this email of the impugned penalty order got buried under hundreds of emails I receive. With the passage of time, since the emails received on a daily basis were mounting, this email containing the impugned penalty order got completely overlooked by my staff Mrs. Pooja Ashanand Mishra for a long time. It is only when the recovery proceedings started against me for the recovery of the outstanding penalty amount I started wondering as to what this liability represents. It is then that it came to light that there was a penalty order dated 28.02.2022 under section 271(1)(c) which I was not even aware of. Then, it is only on tracing the past emails, it came to light that my staff had omitted to see that email containing the penalty order dated 28.02.2022 and omitted to bring the said penalty order to my notice. Had it been brought to my notice at the time it was received, I would have immediately taken remedial action by filing an appeal against the said penalty order at that time. Admittedly, there is some negligence, though nondeliberate, on the part of my staff because of which this delay in filing this appeal has occurred.

I am enclosing herewith a duly sworn affidavit by my staff Mrs. Pooja Ashanand Mishra affirming the above facts.

Your Honour will appreciate that the delay in filing this appeal is non- deliberate, inadvertent and bona fide. Your Honour will also appreciate that there is no mala fide intention on my part in filing this appeai late. On the contrary, I run the risk of being denied justice though I have a good case on merits.”

8. On perusal of the impugned order, it is noticed that the Ld. CIT(A) has relied upon the various judgments of Hon'ble Apex Courts, High Courts



and the ITAT and reached to the conclusion in para no. 5.8 and 5.9 while declining the condonation of delay as under:

“5.8. Thus, it is crystal clear from the above legal proposition that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.9 The Bangalore ITAT in the case of Arya Vysya Kannika Parameshwari Co- Operative Society Ltd for AY 2014-15 vide order dated 07-09-2018 has upheld dismissal of appeal of the assessee by the CIT(A)-7, Bangalore on the ground of delay. The ITAT, Mumbai in the case of Krishna Developers 102 taxmann.com 51 has dismissed the appeal of the assessee which was filed with a delay of 107 days.”

9. The above observation of the Ld. CIT(A) shows that the Ld. CIT(A) has adopted a hyper-technical approach while considering the grounds of condonation of delay in the case of the appellant. The right of appeal to the Ld. CIT(A) u/s. 248 is a statutory right granted to the appellant/assessee. The statutory right cannot be denied to an assessee unless there is inordinate delay or gross negligence on the part of the assessee. It is settled law that the rules and procedure is handmade of justice and the adjudicating authorities should not deny a statutory right of appeal on technical grounds. Para no. 61 of judgment of Hon'ble Supreme Court in the case of *Sesh Nath Singh & Anr. Vs. Baidyabati*



Sheoraphuli Co-operative Bank Ltd. & Anr. in Civil Appeal No. 9198 of 2019 order dated 22.3.2023 can be relied with profit.

“61. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute ‘sufficient cause’ or not would dependent upon facts of each case.

There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bonafides can be imputed to the defaulting party.”

Similarly, Para no. 29 and 31 of judgment of Hon’ble Supreme Court in the case of *Sheo Raj Singh (Deceased) Through LRS. & Ors. Vs. Union of India & Anr.* in Civil Appeal No. 5897 of 2015 order dated 09.10.2023 are relevant and reproduced herein:

“29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must



distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

31. The order under challenge in this appeal is dated 21st December 2011. It was rendered at a point of time when the decisions in *Mst. Katiji (supra)*, *Ramegowda (supra)*, *Chandra Mani (supra)*, *K.V. Ayisumma (supra)* and *Lipok AO (supra)* were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [*State of M.P. v. Bherulal*¹⁴ is one such decision apart from *University of Delhi (supra)*] which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above. We find that the High Court in the present case assigned the following reasons in support of its order:



- a. *The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.*
- b. *The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.*
- c. *It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.*
- d. *Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.*
- e. *The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.”*

10. The appellant has very fairly admitted before the Ld. CIT(A) that there is delay of 380 days in filing the appeal. The appellant has very genuinely given the reasons for condonation of delay before the Ld. CIT(A) and has even filed the affidavit of the concerned employee who was responsible



for receiving emails on behalf of the appellant. The said affidavit of Mrs. Pooja Ashanand Mishra is relevant and reproduced as under:

- “1. I am working for the last 4 years with Mr. Naresh Topandas Aidasani (PAN: ADYP/6970A) at 415, Arenja Corner, Sector 17, Vashi, Navi Mumbai 400 705, who is carrying on the proprietary business of sale of bitumen, petroleum products, steel, cement etc., road contractor for various Government Departments, Government Corporations and Private entities for the last many years.*
- 2. I look after certain administrative, accounting and taxation matters of Mr. Naresh Topandas Aidasani's said business. I also handle and look after his email account and regularly monitor and respond to the various emails received on this email account.*
- 3. Though received in his email account I inadvertently omitted to see the notice dated 31.12.2021 and the penalty order dated 28.02.2022 under section 271(1)(c) of the Income-tax Act, 1961 imposing a penalty of Rs. 17,51,503 for the assessment year 2012-13, both received from the Income-tax Department. It was pure inadvertence on my part and the omission was unintentional.*
- 4. I receive and respond to countless emails everyday on behalf of Mr. Naresh Topandas Aidasani. Once the above emails from the Income-tax Department were inadvertently omitted to be noticed by me, thereafter, these emails got buried in showers of emails I receive everyday and it never came to the light that I had omitted to see these emails from the Income-tax Department.*
- 5. It is only recently, in April 2023, when the recovery proceedings from the Income-tax Department for the recovery of the said penalty of Re. 17,51,503 came to our knowledge that I started tracing the email containing the penalty order dated 28.02.2022 and located the old email and realized that I had completely overlooked the said email containing the penalty order dated 28.02.2022 under section 271(1)(c) of the imposing penalty of Rs. 17,51,503.*



6. *This omission on my part in noticing the said notice dated 31.12.2021 and the said penalty order dated 28.02.2022 the assessment year 2012-13 has resulted in a delay on the Part of Mr. Naresh Topandas Aidasani in filing an appeal against the said penalty order dated 28.02.2022 before the Commissioner of Income-tax (Appeals), which is not attributable to any negligence or default on his part, but is purely due to an inadvertent omission on my part.*
7. *I may add that I delivered a child on 20.07.2021 and I was on maternity leave for a long time. Even after I resumed the office, I had to take frequent leaves in the last one and half year as I had to attend the newborn child I had left home. I also remained quite disturbed and distracted in those days, which perhaps could have contributed to the lapse on my part in noticing the above referred notice dated 31.12.2021 and the above referred penalty order dated 28.02.2022 from the Income- tax Department.*

I make the above statements conscientiously believing the same to be true at Navi Mumbai on 13 day of April 2023.”

11. Thus, it is evident from the affidavit of Mrs. Pooja Ashanand Mishra that she inadvertently failed to notice the email containing the order dated 28.02.2022 sent on the email of the appellant. She has given the detail reasons for the said missing of the notices of the email. We have no reason to disbelieve the affidavit of Mrs. Pooja Ashanand Mishra.
12. Nothing contrary has been brought on record by the respondents which may contradict and falsify affidavit of employee of the appellant in support of seeking condonation of delay. The Hon'ble Supreme Court in the case of *Collector, Land Acquisition Vs. MST. Katiji & Ors.*, [1987] 167



ITR 471 (SC), dated 19.02.1987, was pleased to hold regarding the condonation of delay as under:

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de 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 that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making of justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that:

- 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.”*

13. In the facts and circumstances as discussed above and because of the law laid down by the Hon'ble Supreme Court in *Sesh Nath Singh & Anr. and Sheo Raj Singh (Deceased) Through LRS. & Ors.* referred (supra), we are of the considered opinion that there was sufficient cause for condoning the delay of 380 days by the Ld. CIT(A).

14. For the above reasons, the impugned order of the Ld. CIT(A) is not sustainable in the eyes of law and accordingly set aside with the directions to restore the case of the appellant on the file of Ld. CIT(A) and dispose



the same on merit after duly considering the material brought on record by the appellant before the Ld. CIT(A). The appellant/assessee shall present its case before the Ld. CIT(A) within 90 days of this order.

15. In the result, appeal filed by the assessee is allowed in the above terms.

Order pronounced in the open court on 29.07.2024

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 29.07.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai