

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**SHRI R.S. SYAL, VICE PRESIDENT
AND
PARTHA SARATHI CHAUDHURY, JM**

ITA No. 06/PUN/2021 : Assessment Year : 2014-15

Rajendra Venkat Reddy
Row House No. 7,
Sky Aquila S. No. 39/2
Near Girme Park, Baner
Pune-411 045
PAN; AIJPR 4537L

Appellant

Vs.

The Asstt. Commissioner of Income-tax
Circle-2, Pune

Respondent

Appellant by : Shri M.K. Kulkarni
Respondent by : Shri M.G. Jasnani

Date of Hearing : 14-06-2022
Date of Pronouncement : 14-06-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Id. Commissioner of Income Tax (Appeals)-3, Pune dated 13-12-2017 for the Assessment Year 2014-15 as per the grounds of appeal on record.

2. At the very outset, we find that this appeal is time-barred by 1103 days. The assessee has filed an affidavit explaining the reasons of delay. That on perusal of the affidavit, we find that there is no genuine cause established for such a huge delay in filing this appeal. The Id. A.R also could not substantiate in his arguments as to why such a huge delay has occurred in filing the appeal. The Id. A.R submitted that the assessee was confused regarding correct course of action. We also find that the assessee has even not appeared before the Id. CIT(A) which is evident from para 5 of his order, wherein a total of eight opportunities were provided to the assessee but there was not a single appearance on any of the given date by the assessee. The Id. A.R also could

not submit the reasons why there were non-appearances even before the first appellate authority.

3. The Id. D.R vehemently submitted that the delay of 1103 days which is about 3 ½ years should not be condoned since the Id. CIT(A) states that the assessee was given sufficient opportunities to represent his case and the Id. CIT(A) has taken due care so that the principles of natural justice are also complied with.

4. We have examined the relevant documents on record and find that the assessee has not been able to bring out genuine reasons, firstly, for such a huge delay of filing the appeal before the Tribunal and also why the assessee irrespective of being given eight opportunities by the Id. CIT(A) did not present himself or through his authorised representative before the first appellate authority. Taking the totality of the facts and circumstances into consideration, we are of the considered view that this is a case of inordinate delay in filing the appeal before us and the assessee has not given any genuine reasons for such delay in filing this appeal in the affidavit filed or in the submissions through the Id. A.R. We are in conformity with the submissions of the Id. D.R that this is not a fit case for condoning such a huge delay in filing the appeal and if condoned, it would give a wrong precedent in the coming years. We are also convinced that the assessee deliberately evaded the process of law before the Id. CIT(A). In such scenario the delay of 1103 days of filing the appeal before us cannot be condoned.

5. The Co-ordinate Bench Mumbai in the case of M/s. Phoenix Mills Ltd. Vs. Asstt. CIT in ITA No. 6240/MUM/2007 for A.Y. 1999-2000 dated 23-03-2010 has held that wherein an application for condonation of delay has been moved bonafide, the Court would normally condone the delay but where the

delay has not been explained at all and in fact there is an unexplained and inordinate delay coupled with negligence or sheer carelessness, the discretion of the court in such cases would normally tilt against the applicant. Reverting to the facts of the present case, we have already examined the reasons that such inordinate delay has not been explained by the assessee so as to prove their bonafideness. Further, we have observed that the assessee has been negligent regarding the process of law even before the first appellate authority. Then, thereafter, he has filed the appeal before us after 1103 days. We observe at this juncture that the law of limitation has to be construed strictly as it has an effect of vesting on one and taking away the right from the other. The delay in filing the appeal cannot be condoned in a mechanical or a routine manner since that may jeopardise the legislative intent behind Section 5 of the Limitation Act.

6. It is also noticed in the case of *State of West Bengal Vs. Administrator, Howrah* 1972 AIR SC 749, that the Hon'ble Apex Court held that expression "sufficient cause" should receive a liberal construction so as to advance substantial justice particularly when there is no motive behind the delay. The expression "sufficient cause" will always have relevancy to reasonableness. The action which can be condoned by the court should fall within the realm of normal human conduct or normal conduct of a litigant. It is neither expected nor can it be a normal conduct of a public servant or a litigant that they would keep the files unmoved or unprocessed for months together on the table.

7. We further find that in a Third Member decision of Co-ordinate Bench Chennai in the case of *Jt. CIT Vs. Tractors and Farm Equipments Ltd.* (2007) 104 ITD 149 (Chennai), wherein a distinction was drawn between normal delay and inordinate delay. It was held as follows:

“A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach, but in the latter case no such consideration may arise and such a case deserves a liberal approach.”

In the present case before us, the delay of 1103 days cannot be condoned simply because of the reasons that the assessee was confused regarding the course of action which he was supposed to take as was submitted before us by the Id. A.R., more so when the genuineness and the bonafideness on the part of the assessee has not been established. The assessee was also negligent in his attitude even before the first appellate authority which he also carried forward even before us since he had filed the present appeal with an excessive delay.

8. As also observed by the Hon'ble Supreme Court in the case of Ramlal, Motilal and Chotelal Vs. Rewa Coalfields Ltd. AIR (1962) 361 (SC) that seeker of justice must come with clean hands. In the present case before us, the reasons advanced by the assessee do not show any good and sufficient reasons for condonation of such a huge delay. We accordingly decline to condone the delay of 1103 days and without going into the merits of the case dismiss the appeal of the assessee as barred by limitation.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on this 14th June 2022

Sd/-
(R.S. SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated : 14th June 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT-2 Pune
4. The CIT(A)-4 Pune
5. The D.R. ITAT 'B' Bench Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	14-06-2022	Sr.PS/PS
2	Draft placed before author	14-06-2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	14-06-2022	Sr.PS/PS
7	Date of uploading of order	14-06-2022	Sr.PS/PS
8	File sent to Bench Clerk	14-06-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		