

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPURBENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos.170, 171 & 172/RPR/2022

निर्धारण वर्ष / Assessment Years : 2007-08, 2008-09 & 2010-11

Shyam Sundar Agrawal
Prop. of M/s. Vishnu Shallac Factory,
Baradwar Road, Sakti,
Janjgir-Champa (C.G.)
PAN : AEGPA8337L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Janjgir-Champa (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA i/b
Shri Shailesh Agrawal, CA &
Shyam Sunder Agrawal, assessee

Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 18.01.2023

घोषणा की तारीख / Date of Pronouncement : 18.01.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The captioned appeals filed by the assessee are directed against the consolidated order passed by the CIT(Appeal), Bilaspur dated 04.04.2018, which in turn arises from the respective orders passed by the A.O under Sec. 144/147 of the Income-tax Act, 1961 (in short 'the Act') dated 18.03.2015 for A.Y. 2007-08 and A.Y. 2008-09 AND u/ss.143(3)/147 of the Act dated 20.03.2015 for A.Y.2010-11.

2. On a perusal of the record, it transpires that all the captioned appeals are time-barred by 1563 days. The assessee has filed "affidavits" dated 26.09.2022 explaining the reasons leading to the delay in filing of the respective appeals. On a perusal of the similarly worded affidavits, I find that there is no genuine cause leading to the substantial delay in filing of the said appeals. The Ld. Authorized Representative (for short 'AR') for the assessee also could not come forth with any plausible explanation as regards the inordinate delay involved in preferring of the captioned appeals. On a perusal of the applications read a/w. the affidavits, I find that it is the claim of the assessee-appellant that the delay involved in filing of the present appeals had occasioned on account of lapse on the part of his regular

counsel, viz. Shri Shailesh Agrawal, CA who had failed to provide the requisite details and properly guide him as regards filing of the appeal before the Tribunal. At the time of hearing, it was submitted by the Ld. AR that the substantial delay involved in filing of the present appeals had occasioned because regular counsel of the assessee, viz. Shri Shailesh Agrawal due to the ill-health of his father could not properly attend to his work. Elaborating further, it was submitted by the Ld. AR that due to the aforesaid compelling circumstances Shri Shailesh Agrawal (supra) could not properly guide the assessee as regards preferring of the appeals within the stipulated time period before the Tribunal. I am unable to persuade myself to subscribe to the aforesaid claim of the assessee. The lackadaisical conduct of the assessee can safely, or in fact inescapably be gathered from the fact that he had even delayed the filing of the appeals in all the present cases by a period of 190 days before the CIT(Appeals). Considering the fact that the assessee had adopted a callous approach and without giving any cogent reason delayed the filing of the appeals before him, the CIT(Appeals) had declined to condone the delay of 190 days that was involved in the appeals of the assessee before him. The Ld. AR could not controvert before me the conduct of the assessee in the course of the proceedings before the first appellate authority.

3. Per contra, the Ld. Departmental Representative (for short 'DR') vehemently submitted that considering the past conduct of the assessee appellant the inordinate delay of 1563 days did not merit to be condoned. The Ld. DR relied on the order passed by the Tribunal in the assessee's appeal for A.Y.2010-11 in ITA No.60/RPR/2017, dated 23.11.2022, wherein involving more or less identical facts the Tribunal had declined to condone the delay of 339 days as was involved in the said appeal.

4. On a careful perusal of the orders of the lower authorities and the material available on record, I find that the assessee has not been able to come forth with any justifiable reason leading to the substantial delay of 1563 days in filing of the captioned appeals. Be that as it may, considering the fact that the assessee had as a matter of a consistent practice without any justifiable reason delayed preferring of the present appeals, it can safely be concluded that he is habitually adopting a lackadaisical approach before the appellate authorities. Apart from that, I find that the assessee had failed to participate in the assessment proceedings for A.Y.2007-08 and A.Y.2008-09, due to which the A.O was constrained to frame the respective assessments vide his orders passed u/ss.144/147 of the Act. Considering the totality of the facts and circumstances under

consideration, I am of the considered view that as there is an inordinate delay in filing of the captioned appeals, for which the assessee had failed to come forth with any justifiable reason, therefore, as stated by the Ld. DR and, rightly so, the same does not merit to be condoned. The assessee has not given any genuine reason for the delay in filing of the captioned appeals either in his application seeking condonation of delay and the affidavits filed before me or in the course of hearing of the appeals. All that the assessee had tried to canvass before me was that the delay in filing of the present appeal was attributable to his Chartered Accountant, viz. Shri Shailesh Agrawal who had failed to properly guide him as regards filing of the appeals before the Tribunal. I find no substance in the claim of the assessee that the delay involved in filing of the present appeals was due to bonafide reasons, and the same does not smack of any lackadaisical conduct on his part. In the totality of the facts leading to the delay in filing of the present appeals r.w the conduct of the assessee appellant before the lower authorities, I would mince no words in observing that the same does not merit acceptance. In fact, if I condone the inordinate delay involved in the present cases where the assessee had consistently delayed filing of appeals even before the CIT(Appeals), and also not participated in the assessment proceedings, then, it would send a wrong message and

would lay down a wrong precedent for the times to come. I am of a strong conviction that as the assessee had on account of his callous conduct and a habitual lackadaisical approach delayed the filing of the present appeals by a substantial period of 1563 days, therefore, the applications filed by him seeking condonation of the delay therein involved does not merit acceptance and are liable to be rejected at the threshold.

5. The co-ordinate bench of the Tribunal in the case of M/s. Phoenix Mills Ltd. Vs. Asstt. CIT in ITA No.6240/MUM/2007 for A.Y.1999-2000, dated 23.03.2020, had held that where an application for condonation of delay has been moved bonafide, then, 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, then, the discretion of the court in such cases would normally tilt against the applicant. Reverting to the facts of the present case, I have already examined the reasons that had led to the inordinate delay, which has not been explained by the assessee to have occasioned due to bonafide reasons. As observed by me hereinabove, as the assessee had remained negligent regarding the process of law even before the first appellate authority and had filed the appeals before me after

1563 days, therefore, there appears to be no reason to adopt a liberal view and condone the inordinate delay therein involved. Also, I may 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 party. The delay in filing of the appeals cannot be condoned in a mechanical or a routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

6. I may herein observe that in the case of State of West Bengal Vs. Administrator, Howrah 1972 AIR SC 749, the Hon'ble Apex Court had held that the 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. However, as observed by me hereinabove, as the assessee appellant in the present case is habitually acting in defiance of law, therefore, there can be no reason to allow his application and condone the substantial delay of 1563 days involved in preferring of the captioned appeals.

7. Also, I may herein draw support from a Third Member decision of a co-ordinate Bench of the Tribunal, in the case of Jt. CIT Vs. Tractors and Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai), wherein a fine distinction was drawn between normal delay and inordinate delay. It was held as under:

“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, the delay of 1563 days cannot be simply condoned on the basis of the unsubstantiated claim of the assessee that the same had occasioned on account of failure on the part of his regular chartered accountant in properly guiding him as regards filing of the appeals before the Tribunal. In fact, the conduct of the assessee before the lower appellate authority and the Assessing Officer clearly evidences his disregard for the process of law, which, I find, he had carried forward before me by preferring the appeal beyond a period of 1563 days after the lapse of the stipulated time period.

8. Also, as 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, therefore,

now when in the present appeals the assessee appellant had failed to come forth with any good and sufficient reason that would justify condonation of the substantial delay involved in preferring of the captioned appeals, therefore, I decline to condone the delay of 1563 days and, thus, without adverting to the merits of the case dismiss all the captioned appeals of the assessee as barred by limitation.

9. In the result, all the appeals of the assessee are dismissed in terms of my aforesaid observations.

Order pronounced in open court on day of 18th January, 2023

Sd/-

(रवीश सूद/RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 18th January, 2023

***SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G.)
4. The Pr-CIT, Bilaspur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण,रायपुर/ ITAT, Raipur