

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.443/Ind/2023**  
**(Assessment Year: 2012-13)**

Shri Abhishek Singh (Prop.) Mahaveer Road Lines 9/9 Shriram Apartment, Malviya Nagar Bhopal	Vs.	Pr. CIT-1 Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: ANQPS9754E</b>		
Assessee by	None	
Revenue by	Ms. Simran Bhullar, CIT-DR	
Date of Hearing	28.02.2024	
Date of Pronouncement	29.02.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by the Assessee is directed against the revision order of Pr. Commissioner of Income Tax dated 27.03.2017 passed u/s 263 of the Income Tax Act for A.Y. 2012-13.

2. None has appeared on behalf of the assessee when this appeal was called for hearing. It transpires from the record that after filing the present appeal the assessee is not appearing in the proceeding

before the Tribunal and notice issued through RPAD has been received back with the postal remark "Door Locked". We further note that the notices were also issued to e-mail ID given in form no.36 on three occasions and the same were duly delivered to the E-mail ID. Therefore, it appeared that the assessee is not interested in prosecuting the present appeal either through personally or through the authorized representative. Accordingly the bench propose to hear and dispose of this appeal ex-parte.

3. There is a delay of 2353 days (6-1/2 years) in filing the present appeal. The assessee has filed an application for condonation of delay. The relevant part of the application explaining cause of delay is reproduced as under:

*"That thereafter proceedings u/s 263 of the Act was started by issue of notice dated 20.03.2017 which was served on the counsel as the appellant shifted from earlier address given. The order was served on the counsel but unfortunately the counsel fail to make compliance in time and more so the order intermingled with other papers in the counsel chamber as a result in fact there was delay on the part of the counsel. Letters on during Covid- 19 entire country was under lockdown hence the assessee could not able to make compliance. The counsel delivered the order recently and admitted his mistake. In these background there was delay in filing the appeal and the appellant is ready to file an affidavit.*

*That the order was misplaced in the counsel chamber. In this way, delay in filing the appeal is not intentionally but bona fide as the appellant, was prevented by sufficient cause.*

*It is, therefore, respectfully prayed that the delay in filing the appeal may please be condoned. For this favour act of kindness the assessee shall feel highly obliged."*

3.1 The assessee has also filed an affidavit placed at page no.8 & 9 of the paper cook and the relevant part of the affidavit in para 2 & 3 are as under:

*“2. That the deponent confirmed that an order u/s 263 of the I.T. Act was passed which is dated 27.03.2017 and against the said order a second appeal was filed before the Hon'ble Court through post on 01.11.2023 which was out of time and such delay due to wrong advice given by the counsel who look after deponent's tax matter.*

*3. That the deponent confirmed that the delay in filing the appeal due to wrong advice given by the counsel as he stated that there was no need to file an appeal because the appellant had an alternatively remedy by way of consequential proceedings before the CII(A) in the light of consequential order. Thus, on the basis of such wrong advice by his counsel appeal against the order u / s 263 was not filed before the Hon'ble Court within time.”*

4. Ld. DR has vehemently opposed to the condonation of delay and submitted that the assessee has taken a very vague excuse for delay of more than 6 years in filing the present appeal. Thus, ld. DR has pleaded that the appeal of the assessee is not maintainable and liable to be dismissed being barred by limitation.

5. We have considered the explanation of the assessee as stated in the application for condonation of delay as well as in the affidavit and the contentions of the Ld. DR. The assessee has explained cause of delay in the application that the impugned order was served on the counsel of the assessee as the assessee shifted from the earlier address given on the record of the department. The Ld. Counsel of the assessee failed to make compliance in time and more so the order intermingled with other papers in the chamber of counsel. As a result there was a delay on the part of the counsel. It is further stated that the counsel delivered the order recently and admitted his mistake.

6. Whereas in the affidavit the assessee has taken completely a new stand for explaining the cause of delay due to wrong advise given by the counsel. Apart from taking two entirely different stands one in the application for condonation of delay and another in the affidavit the assessee has also narrated vague reasons for inordinate delay of about 6-1/2 years in filing present appeal. Neither in the application for condonation of delay nor in the affidavit the assessee has given any detail of date on which the order was received by the counsel and thereafter when the assessee has contacted his counsel for taking further steps. Even the particulars of the counsel of the assessee are not given in the application for condonation of delay or in the affidavit. We further note that the assessee has not filed any authority appointing any counsel or representative to appear in the present proceedings before the Tribunal and therefore, the reasons explained by the assessee in the application for condonation of delay as well as in the affidavit are not supported with any record or details to show that the assessee was actually advised not to file the appeal. The two divergent pleas taken by the assessee in the application for condonation of delay as well as in the affidavit are very vague statement on behalf of the assessee without mentioning single detail of time, date or occasion of the alleged events.

7. Though, the expression “sufficient cause” for delay in filing the appeal must be construed liberally in favour of the litigant approached the court belatedly so that the dispute could be decided as far as possible on merits and not on technicalities. However, at

the same time the litigant is not allowed to use the process of law to achieve an ulterior purpose in under hand way by filing the appeal belatedly. Therefore, the concept of liberal interpretation of expression “sufficient cause” would not mean that the requirement of some reasonable cause to justify the delay particularly an inordinate delay be ignored. Therefore, the concept of liberal interpretation cannot be applied by overlooking the apparent unacceptable and unsatisfactory reasons and when it is found that there is absolutely no justification for inordinate delay. The applicant can not take shelter of liberal interpretation without explaining the satisfactory cause of delay. The assessee before us has miserably failed to show that he has acted bona fide and had taken all possible steps within his power and control to file the appeal without unnecessary delay. Except taking vague excuses and shifting the blame on the counsel, the assessee failed to bring any material to show that he was prevented by some circumstances or events which were beyond his control to file the appeal within the period of limitation. It is pertinent to note that after passing the impugned order a consequential order in pursuant to the order passed u/s 263 must have been passed long ago and even the appeal against the said order might have been passed by the CIT(A). Therefore, when the proceedings did not stop on passing of the impugned order but the consequential proceedings before the AO as well as CIT(A) must be going on during these years then the assessee cannot take a plea of lapse on the part of counsel. Accordingly in the facts and circumstances of the case as discussed

above we are of the considered view that the assessee has failed to make out a case of reasonable cause much less sufficient cause for abnormal delay of more than six years in filing present appeal. Hence, we decline to condone the inordinate delay in filing the present appeal and consequently the appeal of the assessee is dismissed being barred by limitation. Since the appeal of the assessee is dismissed as not maintainable being barred by limitation therefore, we do not propose to go into the other issues raises by the assessee in this appeal.

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

Order pronounced in the open court on 29.02.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 29.02.2024**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*