

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.57/Asr/2021
Assessment Year: 2010-11**

M.K. Hotels & Resorts Ltd. Distt. Shopping Complex, Ranjit Avenue, Amritsar. [PAN: AABCM0913G] (Appellant)	Vs.	Assistant Commissioner of Income Tax, Circle-1, Amritsar. (Respondent)
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Appellant by	Sh. Ashwani Kalia, CA
Respondent by	Sh. Ravinder Mittal, Sr. DR

Date of Hearing	22.02.2023
Date of Pronouncement	01.03.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’] order passed u/s 250of the Income Tax Act 1961, [in brevity the Act] order dated

17.05.2021 for A.Y. 2010-11. The impugned order was emanated from the order of the Id. ADIT, CPC, Bangalore, (in brevity the AO) order passed u/s 143(1) of the Act, date of order 15.03.2011.

The assessee has taken the following ground:

- “1. That the Worthy Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the appeal of the assessee in limine by refusing to condone the delay in filing the appeal by the assessee.*
- 2. That the Worthy Commissioner of Income Tax (Appeals) has completely ignored the Affidavit of the assessee dated 19.01.2021 tiled with Worthy Commissioner of Income Tax (Appeals) alongwith Written Submissions.*
- 3. That the worthy Commissioner of Income Tax (Appeals) dismissing the appeal in limine may kindly be set aside with directions to hear appeal on merits.”*

2. Brief fact of the case is that the assessee has filed the return u/s 139 for A.Y. 2010-11. The return was processed u/s 143(1) and deduction u/s 80IB was rejected which was claimed by the assessee regularly since A.Y. 2002-03. The total demand

was raised amount of Rs.12,35,390/-. As per the assessee, there is no intimation was served by the department. So, the assessee was unable to take action against the demand. Finally, the assessee filed an appeal before the Id. CIT(A) on dated 30.01.2020 with a delay of 9 years. The assessee submitted the affidavit against the delay for 9 years. But the delay was not condoned by the Id. CIT(A). The appeal of the assessee was dismissed on basis of the delay in filing appeal. Aggrieved assessee filed an appeal before us.

3. The Id. counsel for the assessee first invited our attention in appeal order page no. 2 para 2 which is reproduced as below:

“2. It could be seen from the above that the appellant has no valid reason for such a huge delay. On one hand the appellant claims that it came to know about the order u/s 143(1) only when there was call for the demand but on the other hand it is fairly admitted in form 35 that the demand notice has been served on 15/03/2011. This clearly indicates that the intimation u/s 143(1) was indeed served way back in 2011 on the appellant. The appellant seems to have not bothered about the same and has woken up only when the demand was pressed. This indicates a casual and lackadaisical approach on the part of the appellant towards appeal matters. It is therefore evident that the appellant is not able to explain such a huge delay on its part for filing

this appeal. On these facts therefore, the delay is not condoned, and the appeal is dismissed in limine.

3. In the result, the appeal is dismissed in limine.”

4. The Id. Counsel for the assessee mentioned the reason of delay that the delay was due to non-receiving of intimation by the assessee. It may be served to the assessee's E-mail which was duly maintained by the accountant and the said accountant had not informed to the assessee. The Id. Counsel pointed out that without proper opportunity the deduction u/s 80IB was rejected in processing of return u/s 143(1). The Id. counsel further mentioned that during appeal the assessee submitted the affidavit with petition for condonation of delay which is annexed in

APB page 6:

“Honourable Sir/ Madam

Re: Application for condonation of delay in filing appeal in case of M/s M.K Hotels & Resorts .id. Distt Shopping Centre , Ranjit Avenue Amritsar for A.Y 2010-11 Pan no-AABCM0913G Appeal No-2/10477/2019-20

The above appeal has been filed against order u/s 143(1) by CPC on 31.01.2020 .The order of CPC are dated 15.03.2011 & have been sent on mail which was never received by the assessee .Mail Id is of

accountant who had left service of the Company long ago & never informed the management regarding the orders passed by CPC in which disallowance of Rs.5300491/- was made.

However when the AO pressed for demand & CPC sent a Notice u/s 245 for A.Y 2019-20 for adjusting refund of that year with the demand for A.Y 2010-11 .it come to the knowledge of assessee & assessee filed the appeal for A.Y 2010-11

The delay in filing the appeal is totally unintentional & without any fault on the part of the assessee.

An affidavit from Sh. Sanjay Galhotra Director of the company looking after the Income Tax & financial affairs of the company is being filed herewith praying for condonation of delay in filing the appeal.

It is therefore prayed that delay in filing the appeal may be condoned & appeal be decided on merits after taking into account the submission of the assessee.

Thanking You

Yours Faithfully

(M. K. Hotels & Resorts Ltd. Jatinder Arora (CA))”

4.1. The ld. counsel mentioned that the assessee wrongly mentioned in Form No. 35 that the date of receiving of intimation was the date of issuance of intimation. The ld. counsel only prayed for accepting the condonation of delay and direct the authority for adjudication of the appeal on merit.

5. The ld. Sr. DR vehemently argued and relied on the order of the ld. CIT(A).

6. We heard the rival submission and relied on the documents available in the record. In fact, there is a delay of 9 years is a huge delay for adjudicating the appeal by the ld. CIT(A). But the assessee also submitted the “reasonable cause” for filing the appeal in delay. In fact, the revenue also not able to submit proof for any other mode of service of intimation to the assessee. However, through the E-mail there is huge confusion in relation to the service of intimation u/s 143(1) of the assessee. The assessee submitted the condonation of delay with an affidavit and also the ld. counsel respectfully relied on the order of Hon’ble Apex Court which are reproduced as below:

Hon'ble Supreme Court in the case of Senior Bhosale Estate (HUF) v. ACIT [2019] 112 taxmann.com 134 (SC):

“Held that where revenue did not expressly refute stand taken by assessee that they had no knowledge about passing of order of Tribunal, dated 29-12-2003, until June, 2008, assessee's delay of 1754 days in filing appeal before Bombay High Court against Tribunal order was to be condoned. The brief facts of the case were that assessee sought condonation of delay of 1754 days in filing appeals against order, dated 29-12-2003, passed by Tribunal. The assessee pleaded that it had no knowledge about passing of Tribunal's order, until it was confronted with auction notices in June, 2008, issued by competent authority, immediately upon which, assessee filed appeal with High Court. The High Court dismissed assessee's appeals holding that these were not fit cases in which inordinate delay of 1754 days in filing appeals deserved to be condoned. However, it was found that respondent revenue did not expressly refute stand taken by assessee that they had no knowledge about passing of order, dated 29-12-2003, until June, 2008. The Supreme Court held that unless that fact was to be refuted by the Revenue, question of disbelieving stand taken by assessee on affidavit, could not arise and for which reason, High Court should have shown sympathy to assessee by condoning delay in filing concerned appeal(s).”

Hon'ble Supreme Court in the case of Shakuntala Devi Jain vs Kuntal Kumari AndOrs. AIR 1969 SC 575, 1969 SCR 1006

“We are inclined to accept the statement that she was under the bona fide impression that the certified copy was not ready, and that is why it was not supplied to her by the copying department. It is not a case where it is possible to impute to the appellant want of bona fides or such inaction or negligence as would deprive her of the protection of Section 5 of the Limitation Act. We are therefore inclined to allow her application under Section 5 and to condone the delay in re-filing the appeal with a certified copy of the order.”

Hon'ble Supreme Court in the case of State of West Bengal V Adm.1972 AIR 749

“It is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' under s. 5 of the Limitation Act. But those words should be liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party; that is, the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps which he could have or should have taken.”

6.1 We find that the assessee has a sufficient cause for non-submission of the appeal within due time. The merit was also not considered in appeal stage as it is

decided in *limine*. Therefore, we remit back the issue to the Id. CIT(A) and direct to pass the order on merits, *denovo*. Needless to say, the assessee should get a reasonable opportunity of hearing in set-aside proceeding.

7. In the result, the appeal of the assessee bearing **ITA No. 57/Asr/2021** is allowed for statistical purposes.

Order pronounced in the open court on 01.03.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order