

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.104/Del./2019
Assessment Year 2015-2016

M/s. Raj Profin Private Limited, 125, Veer Nagar, Jain Colony, New Delhi. PIN – 110 007 PAN AAACR5263M	vs.	The Income Tax Officer, Ward-21(1), Room No.220, Main C R Building, I P Estate, New Delhi-110002.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Kumar Gupta, CA
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	03.08.2021
Date of Pronouncement :	16.09.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 31.10.2019 of the Ld. CIT(A)-7, New Delhi, relating to the A.Y. 2015-2016.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 26.03.1996 declaring total income of Rs.23,30,960/-. The A.O. completed the assessment under section 143(3) of the I.T.

Act, 1961 on 08.12.2017 determining the total income of the assessee at Rs.36,59,160/-.

2.1. The assessee preferred an appeal before the Ld. CIT(A). However, since the appeal filed by the assessee was delayed by 05 days, the Ld. CIT(A) did not condone the delay and dismissed the appeal. Even on merit also, the additional evidences filed before the Ld. CIT(A), were forwarded to the A.O. for remand report. The A.O. issued notice to the assessee during the remand proceedings, but, since there was no response from the side of the assessee, he requested the Ld. CIT(A) not to admit the additional evidence. In view of the above, the Ld. CIT(A) dismissed the appeal filed by the assessee as barred by limitation by observing as under :

“3.7. Moreover, the grievance in this does not arise from any action of the A.O. and no justification is furnished indicating sufficient cause to explain the delay in late filing of the appeal. In view of the foregoing, it is held that the appellant has not given a sufficient cause for filing the appeal late. Consequently, the delay in filing the appeal late is

not condoned and the appeal filed is not admitted. The appeal is barred by limitation. The appeal is rejected in limine.”

3. Aggrieved with such order of the Ld. CIT(A), the assessee has preferred an appeal before the Tribunal by raising the following grounds :

“Respected CIT Appeal rejected appeal, on limitation point only (on late filing of 5 days). Respected CIT Appeal has not condone Delay of 5 day in filing appeal , and delay was caused reasonable cause - to time taken (21 days) by LD ITO in giving of information Appeal is filed on day, information is received from LD. A.O.

- 1. Delay of 5 day late filing, caused due to time taken (21 days) by LD ITO in giving of information is reasonable cause.*
- 2. All the material was on record, arguments are made on merit and then case is decided on limitation points ignoring various judgment.”*

4. I have heard the rival arguments made by both the sides and perused the orders of the A.O. and Ld. CIT(A). I find the Ld. CIT(A) in the instant case did not admit the appeal filed by the assessee since there was a delay of 05 days in filing of the appeal. It is the submission of the Learned Counsel for the Assessee that in the interest of justice, the Ld. CIT(A) should be directed to condone the delay and decide the appeal on merit. I find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST. Katiji & Ors., reported in [1987] 167 ITR 471 (SC) observed that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. The Hon'ble Supreme Court while condoning the delay has laid down the following guidelines :

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.*
3. *“Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable*

negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

4.1. Considering the totality of the facts and circumstances of the case and in the interest of justice and in view of Judgment of Hon'ble Supreme Court cited (supra), I direct the Ld. CIT(A) to condone the delay of 05 days in filing the appeal before him and decide the issue on merit by admitting the appeal. The assessee is also hereby directed to appear before the Ld. CIT(A) and make necessary submissions without seeking any adjournment under any pretext failing which, the Ld. CIT(A) is at liberty to pass appropriate order as per Law. I hold and direct accordingly. Grounds raised by the assessee are allowed for statistical purposes.

5. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16.09.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 16th September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.