

ಸೌಕರ್ಯ

ತುರ್ತುಪಡೆ ಪ್ರದರ್ಶನ



The biggest merger in corporate history- HDFC shall merge with HDFC Bank.

The ratio of India's Financial Assets to India's Financial Liabilities stood lower at 72.1% at December end.



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CHAIRMAN'S MESSAGE

Dear Members & Students,

The members are back to their offices after completion of bank audits, indulging back into their daily routines. The Managing Committee had planned a series of events for the month of April 2022 and the same were executed well with all of your support and participation. The Managing Committee is organising various programmes considering the interest of members and students at large. The Residential Refresher Course is being organised at Madikeri by Mangaluru Branch jointly with Bengaluru and Udupi branches. This provides an opportunity to network with members of other branches and expand our horizons. The month of April is being celebrated as the month of Intellectual Property Rights, and the month of May is being celebrated as the month of RERA, by ICAI to create awareness amongst the members about the additional practice areas available for members in practice, to explore the new opportunities available.



The Chartered Accountants are known for audit of books of account of the tax payers and wealth management in the society. This task keeps us so busy that we tend to ignore the importance of our health. Hence, as one step towards improving the health of our members, the branch is organising a Yoga Camp in the month of May, starting from 23rd of May, at ICAI Bhawan, Mahendra Arcade.

The Mangaluru Branch is organising a Two day National Conference "Parijnana"- Engaging Minds for Enriching Knowledge on the 7th & 8th of June 2022 at one of the most iconic convention centres in Mangaluru "Dr. T. M. A. Pai International Convention Centre". The event spread across two days is having an anticipated gathering of above 1,000 delegates from our city, state & nation to take part in the deliberations along with representatives of Industrial Houses and the Business Community. We have resource persons of repute & eminence, who shall address the delegates. The highest office bearers of our Institute too will feature in the Conference, marking it as an event to

look forward to for the entire CA fraternity. We request you to reserve your dates and join us to spend some quality time enriching your knowledge.

I would like to end my message with a quote by aerospace scientist and former President of our nation- Dr A. P. J. Abdul Kalam:

“If you want to shine like a sun, first burn like a sun”

Signing off,

CA Prasanna Shenoy M

Chairman

On behalf of Managing Committee

Mangaluru Branch of SIRC of ICAI

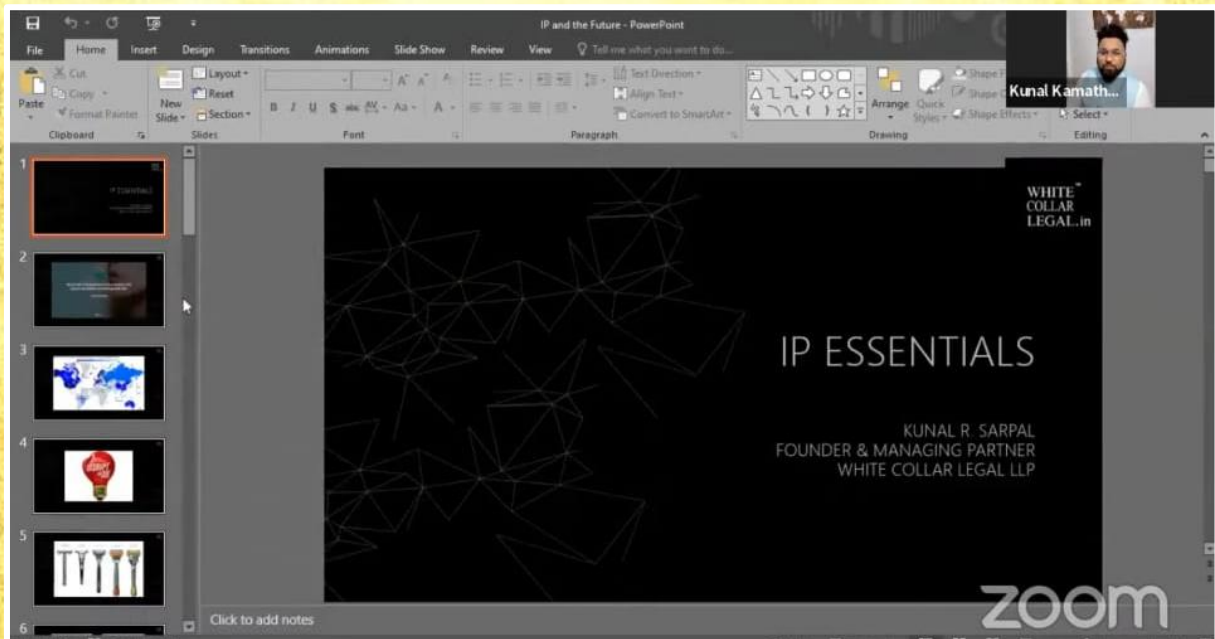


BRANCH ACTIVITIES FOR THE MONTH OF APRIL 2022

NO.	DATE	ACTIVITIES
01	23-04-2022	<p>Virtual CPE Meeting</p> <p>Topic: <i>Intellectual Property Rights Advisory Services- Opportunities & Challenges</i></p> <p>Speaker: CS Adv. Kunal Kamath Sarpal, <i>Founder and Managing Partner of White Collar Legal, Pune</i></p>
02	27-04-2022	<p>CPE Seminar under Professional Opportunities Series</p> <p>Topic: <i>Condonation of Delay in Returns and Forms under Income Tax Act- Provisions, Procedures & Practical Issues</i></p> <p>Speaker: CA Sriram V. Rao, <i>Mangaluru</i></p>

BRANCH ACTIVITY GALLERY FOR THE MONTH OF APRIL 2022

Virtual CPE Meet on Intellectual Property Rights held on 23rd April 2022



CS Adv. Kunal Kamtath Sarpal providing experienced insight into the topic.





CPE Seminar on 'Condonation of Delay of Returns' by CA Sriram V. Rao, at ICAI Bhawan, Mahendra Arcade.



CONDONATION OF DELAY UNDER INCOME TAX ACT 1961

LEGISLATIVE FRAMEWORK FOR COD

Powers of CBDT/Income Tax Authorities

- Section 119(2) (b) & (c) - Specific power to - COD in returns & forms.
- Section 139(9) read with proviso thereon - Rectifying defective return.

Powers of Appellate Authorities

- Section 249(3) & Section 253(5) - Filing of Appeal Forms 35, 36 & 36A.

LEGISLATIVE HISTORY

- Section 119, in its present form had no equivalent in the 1922 Act, section 5(8) of the old act was similar to 119(1) of the 1961 act.
- Since there was growing compliance works, due to increase in scope of Income Tax Act, it was required to delegate certain power to the Board, so as to effectively administer the execution of The Income Tax Act.
- Hence, provisions of Section 119(2) and clauses there under were introduced in IT Act 1961 and inserted clauses from time to time as and when necessitated.

SEC 119 - INSTRUCTIONS TO SUBORDINATE AUTHORITIES

119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board.

Provided that no such orders, instructions or directions shall be issued—

(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; OR

(b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

119 (2) Without prejudice to the generality of the foregoing power,—

(a) The Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of Sections 115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK, 139, 143, 144, 147, 148, 154, 155, 158BFA, sub-section (1A) of section 201, Sections 210, 211, 234A, 234B, 234C, 234E, 270A, 271, 271C, 271CA and 273 or otherwise), general or special orders in respect of any class of incomes or fringe benefits or class of cases, setting forth directions or instructions (not being prejudicial to assessee) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information.

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:

i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed.

SEC 139(9) - DEFECTIVE RETURN

Proviso to Section 139(9) - Provided that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

CIRCULAR 9/2015 DT. 09-06-2015

COD IN FILING REFUND CLAIMS & C/F OF LOSSES

- Delegation of Power for COD

POWER VESTED WITH	CLAIM AMOUNT
CIT/PCIT	Not more than ₹ 10 lakhs
CCIT/PCCIT	More than ₹ 10 lakhs but does not exceed ₹ 50 lakhs
CBDT	Exceeds ₹ 50 lakhs

- No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year.
- In a case where refund claim has arisen consequent to a Court order, condonation application is filed within six months of Court order in which issued or the end of financial year whichever is later.
- In COD it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.
- Authorities are empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.
- Belated application for supplementary claim of refund - No interest will be admissible & refund should have arisen out of excess TDS / TCS / Advance Tax / Self Asst. Tax.

PROCEDURE FOR FILING COD - RETURN OF INCOME

- File Application for COD before appropriate authority manually.
- No specific format, hence on letter head/plain sheet of paper, draft facts & circumstances.
- Mention what is the genuine hardship and enclose documentary evidence as a proof.
- Mention what is aggregate claim & enclose computation of income as well as return of income thereon duly verified by the assessee.

- It is likely that, inquiry/scrutiny would be carried out by JAO.
- Provide necessary explanation and details to JAO to his satisfaction.
- If any opportunity of being heard is provided, then make appropriate representation.

CIRCULAR 273/1980 DT. 03-06-1980

COD IN FILING FORM 10

- Power has been vested with CIT/PCIT.
- While entertaining such applications, satisfy themselves that the following conditions are fulfilled:
 - a) That the genuineness of the trust is not in doubt.
 - b) That the failure to give notice to the Income-tax Officer under section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight.
 - c) That the trustees or the settlor have not been benefited by such failure directly or indirectly.
 - d) That the trust agrees to deposit its funds in the prescribed securities prior to the issue of the Government sanction extending the time under section 11(2).
 - e) That the accumulation or setting apart of income was necessary for carrying out the objects of the trust.

CIRCULAR 3/2020 DT. 03-01-2020

COD IN FILING FORM 10 & 9A

- Power has been vested with CIT/PCIT.
- Filing of Form 9A & 10 electronically was initiated from AY 2016-17 onwards.
- Admit COD applications for AY 2016-17 & AY 2017-18 and for AY 2018-19 onwards, if delay is upto 365 days.
- While admitting COD, CIT/PCIT should satisfy
 - i) Assessee was prevented from reasonable cause
 - ii) In respect of Form 10, investment is made u/s 11(5)

- If the delay is beyond 365 days, then impliedly COD power would be with CBDT.

CIRCULAR 2/2020 DT. 03-01-2020

COD IN FILING FORM 10B

- For AY 2016-17 & AY 2017-18 – delay would be condoned in cases where 10B obtained before filing ROI & filed electronically after filing return of income within due date prescribed u/s 139.
- In all other cases, prior to AY 2018-19, CIT/PCIT has power to condone delay in filing 10B.
- In cases of AY 2018-19 onwards, if delay is upto 365 days, CIT/PCIT can COD.
- While admitting COD application, CIT/PCIT should satisfy that assessee was prevented from reasonable cause.
- If the delay is beyond 365 days, then impliedly COD power would be with CBDT.

CIRCULAR 19/2020 DT. 03-11-2020

AS MODIFIED BY CIRCULAR 6/2021 DT. 26-03-2021

COD IN FILING FORM 10BB – 10(23C)(VI)& (VIA)

- In all cases, prior to AY 2018-19, CIT/PCIT has power to condone delay in filing 10BB.
- In cases of AY 2018-19 onwards, if delay is upto 365 days, CIT/PCIT can COD.
- While admitting COD application, CIT/PCIT should satisfy that assessee was prevented from reasonable cause.
- Such COD should preferably be disposed of within 3 months.
- If the delay is beyond 365 days, then impliedly COD power would be with CBDT.

OTHER RELEVANT CIRCULARS ISSUED U/S 119(2)(B)

- Circular No 4/2012 dt. 20-06-2012 - empowering A.O. to rectify wrong arrears of demand raised in system even after expiry of time limit u/s 154(7).
- Circular No. 774/1999 dt. 17-03-1999 - Apply COD to CBDT if there is any delay in filing Form 13 u/s 197 for lower deduction of TDS.
- Circular No. 6/2022 dt. 17-03-2022 - COD for filing Form 10-IC - 115BAA for AY 2020-21.

Conditions,

- (a) ROI filed within due date
- (b) Company has opted for 115BAA in ROI &
- (c) 10-IC is filed by 30-06-2022

PROCEDURE FOR FILING COD – VARIOUS FORMS

- File electronically requisite Form (9A, 10, 10B, 10BB etc.).
- File Application for COD before appropriate authority manually.
- No specific format, hence on letter head/plain sheet of paper, draft facts & circumstances.
- Mention what is the genuine hardship (normally it would be deemed as tax liability would cause genuine financial hardship to trust) and enclose documentary evidence as a proof, if any.
- Provide proof of submission of requisite form as required under IT Act & proof of other compliances as required.
- Provide explanation of reason which prevented from furnishing of Forms within time prescribed with documentary evidence & affidavit if any required thereon.

During opportunity of being heard is provided, then make appropriate representation.

CONDONING DELAY BEYOND 6 YEARS

Devendra Pai - 135 taxmann.com 196/ 285 Taxman 438/ 439 ITR 532

- Karnataka HC (2022)

Where assessee, a retired bank employee, availed early retirement scheme but did not claim section 10(10C) benefit in his return and thereafter filed letter for rectification and sought to claim section 10(10C) benefit but as no order had been passed in respect of said letter, he filed section 119 application for filing revised return after 6 years and sought to condone delay, but it was rejected as it was filed after 6 years, since Assessing Officer had noticed that assessee was entitled to said exemption, and no order had been passed on said letter, a fit case for consideration of revised return was made out and it would be apt to set aside order under section 119 and condone delay.

POWER TO CONDONE DELAY

R N Shetty Trust - 343 ITR 294 (2012) (Kar. HC) which followed Mysore Sales International Ltd - 233 ITR 663 (1998) (Kar. HC)- held that

- The CBDT has sufficient powers under section 119(2)(b) of the Income-tax Act, 1961, to consider the desirability or expediency of granting relief under the Act, even after the expiry of the period of limitation provided under any specific provision and dispose of the matter on the merits in accordance with law, provided it is intended for avoiding genuine hardship in a given case.
- Hence, order of CBDT rejecting the COD application stating that they do not have power to condone, was squashed.

Jaswant Singh Bambha v/s CBDT - [2005] 148 Taxman 528 / 272 ITR 1/ 193 CTR 184- held that

- By virtue of power conferred on Board under section 119(2), CBDT is fully competent to admit an application for refund even after expiry of period prescribed under section 239 for avoiding genuine hardship in any case or class of cases.
- The power to entertain a belated claim under s 119(2) is similar to the power under s 5 of the Limitation Act, 1963; consequently, it can entertain a claim for refund beyond the period mentioned in s 239 of the Act. Section 5 of the Limitation Act, 1963 has not been expressly excluded by s 239.

GENUINE HARDSHIP

Gujarat Electric Co. Ltd. v. CIT [2002] 120 Taxman 733/ 255 ITR 396 (Guj. HC)

- In view of provision of section 119(2)(b), phrase 'genuine hardship' should have been construed liberally.
- Return claiming refund could not be filed by assessee in time due to ill-health of Principal Officer who was looking after taxation matters - delay caused in filing claim for refund was satisfactorily explained.

K L Jaiswal v/s WTO [1994] 116 CTR 508/ 221 ITR 426 (MP HC)

In the context of section 18B, the words 'genuine hardship' used in clause (i) of sub-section (4) of section 18B cannot be construed as financial hardship only. The words 'genuine hardship' are comprehensive enough to include other hardship arising out of the facts and circumstances of the entire case commencing from the filing of the wealth-tax return.

Pala Marketing Co-op. Society Ltd. v. UOI [2008] 167 Taxman 238/ 311 ITR 177 (Ker.)

What is stated in section 119(2)(b) is that if the Board considers desirable or expedient for avoiding genuine hardship to the assessee, it should condone the delay. In other words, what the Board should consider is hardship to the party if the delay is not condoned. The Board should condone the delay if failure to condone the delay causes genuine hardship to the assessee, no matter whether the delay in filing the return is meticulously explained or not. The genuine hardship contemplated under section 119(2)(b) obviously is financial hardship caused to the assessee if the delay is not condoned.

Vasco Sales & Marketing Corpn [2016] 66 Taxmann.com 366/ 377 ITR 318 (Ker.)

- Where assessee filed an application to condone delay in filing claim of refund for advance tax paid, what was required to be examined in terms of section 119(2)(b) was whether to avoid genuine hardship to assessee it was necessary to condone delay in making application.
- The Commissioner has discussed on the merits of the application and held that the delay has not been properly explained and that when the returns are filed in response to the notices issued under section 148, the assessee will not be entitled to claim refund of advance tax paid. Such an order does not reflect a proper exercise of power under section 119(2)(b) [Matter remanded for fresh consideration].

PDS Logistics International (P) Ltd v. CCIT [2018] 93 Taxmann.com 194/ 414 ITR 527 (Kar. HC)

Where assessee was a genuine taxpayer, it was regularly filing its return and only for relevant assessment year 2006-07 due to sudden crashing of its computer system, it was unable to file returns within prescribed time, and further assessee was also not avoiding any scrutiny, it could be said that there

was genuine hardship in case of assessee and mere circumstance that financial report and audit reports were signed by managing director on 4-9-2006, would not be a ground to reject application for condonation of delay in filing return of income.

Jay Vijay Express Carriers v. CIT [2013] 215 Taxman 562/ 34 taxmann.com 61 (Guj. HC)

- For AY 2005-06 - claim for deduction of freight expenditure was disallowed by Assessing Officer on ground of non-deduction of TDS - Assessee contested in appeal - CIT(A) held that credit for expenditure may be allowed in year in which TDS was deposited.
- Assessee deposited TDS on 29-3-2008 - filed a return for AY 2008-09 but deduction of freight expenses was not claimed.
- Subsequently filed a revised return claiming deduction of freight expenses - Since said revised return was filed after due date, a petition file COD before CIT u/s 119.
- Under these facts & Circumstances assessee being a small time transport operator, disallowance of huge amount of freight expenses would cause a genuine hardship, a case for COD in filing revised return belatedly was made out under section 119(2)(b).

Beta Cashews & Allied Products (P) Ltd v. CIT [2016] 73 Taxmann.com 202/ 289 CTR 564 (Ker. HC)

When an assessee has incurred huge losses over a period of time, it has to be assumed that it has genuine hardship and that genuine hardship can be redressed or avoided only on payment of amount which is legally due to it.

Madhya Pradesh State Electricity Board v. UOI [2011] 9 Taxmann.com 152/ 197 Taxman 238/ 331 ITR 50/ 239 CTR 87 (MP HC)

- An organization fully owned and aided by Government of Madhya Pradesh, was engaged in business of power - For relevant assessment years, it had filed its loss returns belatedly and sought for condonation of delay, contending that as per provisions contained in M.P. Re-organisation Act, 2000, erstwhile State of Madhya Pradesh and assessee-Board, both were bifurcated and because of that reason, return could not be filed in time.
- since in instant case assessee had suffered a loss of about Rs. 1,500 crores, if return filed by assessee was not accepted by department, then loss suffered by it could not be carried forward and it would cause genuine hardship to it in successive assessment.

M Rajan v. PCIT [2016] 76 Taxmann.com 164 (Ker. HC)

There was substantial delay in filing return - Application for condoning delay was filed by assessee - Assessee was under severe financial crisis, so he had to close down his business - His registration under Kerala Value Added Tax

had been cancelled and he was involved in cases for dishonour of cheques - Thus, he suffered losses and faced genuine hardship - Delay in filing return was to be condoned for year where application was filed within 6 years period from end of concerned assessment year.

Smt. Dr. Sudha Krishnaswamy v. CCIT [2018] 92 Taxmann.com 306/ 414 ITR 144/ 255 Taxman 46 (Kar. HC)

Assessee-NRI filed an application for condonation of delay of 1232 days (3 years ++) in filing return on ground she was not in a position to file her returns on time due to severe financial crisis in United States of America and injuries sustained by her in an accident, enclosing a medical report in support of claim. Further, for said years she had no taxable income and she was entitled to refund relating to TDS from interest and bank deposits - Whether though there was some lapse on part of assessee, that by itself would not be a factor to turn out plea for filing of return, when explanation offered was acceptable and genuine hardship was established - Matter remanded for fresh consideration.

Daison Jospeh v. PCIT [2020] 116 Taxmann.com 997/ 272 Taxman 51 (Ker. HC)

Assessee submitted that he could not concentrate on his business activities as his 2 years old daughter was diagnosed with a serious cancerous ailment and he had to visit different hospitals for treatment of his child due to which delay had occurred in filing return - Matter remanded to verify the genuineness of claim assessee for a fresh consideration.

Dilip Buildcon Ltd. v. UOI [2017] 81 Taxmann.com 290/ 290 CTR 57 (MP HC)

Where due to seizure of thousands of loose papers and books of account of company during search, assessee could not file return in time, it could be said that there was genuine hardship to assessee in not filing return in time and, hence, delay could be condoned.

CBDT v/s Vasudeva Adigas Fast Food (P.) Ltd. - 128 Taxmann.com 287/ 282 Taxman 48/ 437 ITR 67 (Karnataka HC) (2021)

Where CBDT rejected assessee's application for condonation of delay in filing return without appreciating reasons given by assessee for such delay and without considering documents produced by assessee (internal disputes and prolonged litigation between promoters and investors concerning very management), in view of fact that such delay was beyond control of assessee said order was to be set aside and application for condonation of delay was to be allowed.

Artist Tree (P.) Ltd. v/s CBDT [2014] 52 Taxmann.com 152/ 228 Taxman 108 (Bombay HC)

Where delay in filing of returns was only on account of misplacement of TDS certificates which was to be necessarily filed along with return of income, which was misplaced or mislaid during the course of shifting of office & considerable time was spent (22 months) on retrieving the same, a case of genuine hardship is made out. Hence, order by CBDT refusing to condone delay was to be set aside.

Cosme Matias Menezes (P.) Ltd. - 60 taxmann.com 233/ 233 Taxman 293 - Bombay HC (2015)

Refusal by CBDT to condone one day delay in filing of return of income is a failure to exercise of power vested under section 119(2)(b) - considering that the delay in the instant case is only of one day, it is found that the approach of the respondents in refusing to condone the delay is a pedantic which, if allowed to stand, would result in great hardship to the petitioners for no fault of the petitioners.

A Balakrishnan [2007] 161 Taxman 379/ 290 ITR 227 (Kar. HC)

- Section 139 does not indicate that authorities are barred from processing return filed under Act just because it is not filed within time stipulated either under section 139(1) or 139(4).
- A return filed is bound to be processed by income-tax authorities for which purpose they are meant unless there is an embargo placed.
- While it is open to an assessee to invoke provisions of section 119, not invoking provisions of section 119(2)(b) by assessee does not come in way of duty of Income-tax.

Department to process return filed by it belatedly

Deep Narayan Gupta v. CBDT [2004] 135 Taxman 499/ 264 ITR 251 (Patna HC)

- The existence of genuine hardship must depend on the facts of each case and no fixed criteria in a straitjacket formula can be laid down.
- Nothing has been stated on behalf of the petitioner explaining the delay in filing the returns.
- CBDT stated that "It is further noticed that the assessee has deliberately filed his returns much after the due date only to escape the scrutiny assessment. For example for the assessment year 1993-94, the net profit shown by the assessee is very low. There is no audit report enclosed with the return. In the balance-sheet, the assessee has shown unsecured loans and other finance as liabilities. The late filing of return apparently indicates that the assessee has manipulated his accounts and has prevented scrutiny assessment by the Department".

Trust For Reaching The Unreached Through Trustee [2021] 279 Taxman 229/ 126 Taxmann.com 77 (Guj. HC)

- Assessee charitable trust registered u/s 12A, filed its return declaring income of certain amount - Assessee had not furnished Form no. 10.
- COD was rejected, no genuine hardship was shown by assessee which prevented it from filing Form no. 10.

- Since assessee was a public charitable trust for past 30 years who substantially satisfied condition for availing benefit of exemption under section 11, assessee should not be denied same merely on bar of limitation, especially, when legislature had conferred wide discretionary powers to condone such delay on authorities concerned.

Shri Mayur Foundation v/s ITO [1991] 39 TTJ (Ahd.) 630 - affirmed by Gujarat HC - CIT v/s Mayur Foundation (2005) 274 ITR 562

- Assessee charitable trust had received voluntary contributions of certain amount - Assessing.

Officer after granting permissible accumulation of 25 per cent, levied tax in hands of assessee, for non filing Form 10, which was upheld by Commissioner (Appeals).

- During pendency of appeal before ITAT, filed COD before CIT for Form 10, who rejected.
- Additional Ground was raised before ITAT, which allowed such ground taking view that assessee has already complied with requirements of 11(2) & 11(5) and accordingly allowed deduction/accumulation u/s 11(2) and if not allowed then it would lead to genuine hardship.

TIME LIMIT PRESCRIBED U/S 11 IS DIRECTORY & NOT MANDATORY

CIT v/s Anjuman Moinia Fakharia (Rajasthan HC) - 75 Taxman 517/ 208 ITR 568, 119 CTR 91 (1994)

- Rule 17 as stood before 01.04.1971 did not provide any time limit for filing Form 10.
- Time limit prescribed from AY 1971-72 only. For relevant assessment year 1973-74 and 1974-75, by applying principals as laid down in STO v/s K.I.Abraham (1967) 20 STC 367, it is held that the time limit as prescribed would only be Directory and not Mandatory to claim deduction u/s 11(2).
- However, other conditions of investment u/s 11(5) should be complied with Time Limit Prescribed u/s 11 is Directory & Not Mandatory Ursuline Franciscan Congregation Generalate Somarpann Declaralakatte v/s ITO (Bang. ITAT) - 131 taxmann.com 81/ 191 ITD 238 (2021).
- Assessment year 2012-13 - Assessee filed Form No. 10 and resolution requesting Assessing Officer to permit accumulation of income under section 11(2) for first time before completion of assessment proceeding, instead of filing same along with return of income.
- Since time limit for furnishing Form No. 10 has been prescribed in section 11(2)(c) by Finance Act, 2015 with effect from 1-4-2016 only, year under consideration being assessment year 2012-13, amended provisions will not

be applicable and thus, Assessing Officer should have entertained Form No. 10 and resolution filed by assessee.

SUBMISSION OF ACCUMULATION U/S 11(2) BY LETTER

CIT v/s Moti Ram Gopi Chand Charitable Trust (Allahabad HC) - 49 taxmann.com 315/ 230 Taxman 153/ 360 ITR 598 (2014)

- Assessment year 2008-09 - Even when a request by way of letter, which complies with requirement and furnishes all information required in Form 10 was made available on record and there was sufficient proof before Assessing Officer that amount was not only kept apart but was also spent in next year, exemption was to be granted.

POWER TO CONDONE DELAY FOR INVESTMENT U/S 11(5)

West Fort Higher Education Trust v/s ITO (Kerala HC)- 77 taxmann.com 13 (2016)

- Assessment year 2010-11 - Power of Commissioner to condone delay under section 119(2)(b) is not confined only to failure to give notice to Income-tax Officer under section 11(2) alone; it can also be extended under section 11(2) for condoning delay in depositing accumulated amount as prescribed u/s 11(5).

PRINCIPALS OF NATURAL JUSTICE

Gujarat Institute of Desert Ecology v/s CIT [2003] 131 Taxman 274/ 260 ITR 595/ 180 CTR 351 (Gujarat HC)

- Assessee's COD was rejected without giving opportunity of being heard.
- When decision on question whether delay should be condoned or not entails drastic civil consequences on assessment of petitioner-trust, principles of natural justice are required to be read into provisions of section 119(2)(b).

POWERS OF APPELLATE AUTHORITIES TO CONDONE DELAY

Section 249(3) -The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period (Form 35).

Section 253(5) - The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that

there was sufficient cause for not presenting it within that period (Form 36 & 36A).

PROCEDURE FOR FILING APPLICATION COD

- Mention in Form 35, 36 or 36A - whether there is any delay.
- In Form 35 - CIT(A), you have provision to explain the cause of delay and also can upload documentary evidence in support of such sufficient cause.
- In Form 36 & 36A - ITAT - Appellant/respondent has to separately enclose application for condoning delay in submission of appeal/cross objections with documentary evidence in support of such sufficient cause.
- Along with COD before ITAT, a duly sworn affidavit also needs to be enclosed.
- During the course of hearing, appropriate representation has to be made to get COD Collector, Land Acquisition, Anantnag v/s Mst Katiji on 19th February 1987 - Supreme Court of India - 167 ITR 471 Principals laid down by Apex Court are as under.

SUFFICIENT CAUSE

Collector, Land Acquisition, Anantnag v/s Mst Katiji on 19th February 1987 - Supreme Court of India - 167 ITR 471

Principals laid down by Apex Court are as under

- 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 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, commonsense and pragmatic manner.
- 4) When substantial justice and technical consideration are pitted against each other, the 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 the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Suhas Suresh Shet (Bang. ITAT) ITA No.607 & 608/Bang/2021 (05-04-2022)

Delay of 591 & 775 days condoned - delay was caused since he was a non-resident and advice of the tax consultant to represent before the Revenue.

Mrs. Premalatha Pagaria (Karnataka HC) 130 taxmann.com 403/283 Taxman 68

- Impugned order dated 3-9-2015 passed by Commissioner (Appeals) was delivered to assessee some time in September, 2015 and immediately after receipt of said order, assessee supplied said order to office of her Chartered Accountant for taking action for filing of an appeal - It was case of assessee that aforesaid order was not brought to notice of Chartered Accountant by his staff, and same remained in his office files without any action - On 7-10-2016 assessee made an enquiry and learnt that appeal had not been filed - She then took action to contact another Chartered Accountant and filed appeal thereon.
- Delay of 310 days can be condoned under the facts & circumstances.

Perfect Scale Company (P) Ltd (Mumbai ITAT) 38 Taxmann.com 279 (2013)

- Delay of 513 days condoned - It was held that "we are of the opinion that because of the wrong advice given by an AR (Chartered Accountant) the assessee's right to appeal should not curtailed and assessee should not be penalized, so in the interest of justice and fair play, we condone the delay and admit this appeal for hearing".

G M Geri & Sons (Mumbai ITAT) 98 Taxman 19 (1998)

Filing of appeal by assessee was delayed due to death of its Counsel to whom all required documents including signed memo of appeals had been made available - For reasons stated by assessee, duly corroborated by affidavit of deceased counsel's employee and in order to render substantial justice, delay deserved to be condoned.

G Sundaravel & Bros (Madras HC) 306 ITR 38 (2008)

Because of quarrels between partners, a partner who had received order of Commissioner (Appeals) did not hand over said order to other partners and thus order came to knowledge of other partners later delay in filing appeal by 25 days constitute reasonable cause and thus delay was to be condoned.

N Balakrishnan v/s M Krishnamurthy on 03rd September 1998 - Supreme Court of India

- Section 5 of Limitation Act, 1963 – Length of Delay is not relevant as long as such delay is acceptable as sufficient cause.

LENGTH OF DELAY

CIT V/s K S P Shanmugavel Nadai & Ors (153 ITR 596)

- Condoned delay of 21 years and 71 days.
- When assessee was pursuing other remedies all these years, which was upheld & condoned.

(Income Tax Act 1922 & Excess Profit Tax Act, 1940)

APPEAL TO HC AGAINST ITAT ORDER DECLINING COD

V K Srinivasn V/s CIT (2012) – 17 Taxmann.com 233

- Appeal under section 260A is not maintainable against order passed by Tribunal declining condonation of delay under section 253(5).
- The assessee will have to resort to Writ under article 226/227 of Constitution.



CA Sriram V. Rao
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TEST YOUR KNOWLEDGE

1. What will be the rate of tax and nature of supply of a service if the same is not determinable at the time of receipt of advance?

- a. 12%, inter-state supply
- b. 12%, intra-state supply
- c. 18%, inter-state supply
- d. 18%, intra-state supply

2. The time-limit for issuance of order of best judgment assessment under GST is:

- a. 5 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- b. 4 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- c. 3 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- d. 2 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.

3. Which of the following transactions does not qualify as supply under GST law?

- a. Disposal of car without consideration and the supplier has not claimed input tax credit on such car.
- b. A principal make supplies to his agent who is also registered under GST and is situated within the same state and the invoice for further supply is issued by the agent in his name.
- c. Head office makes a supply of services to its own branch outside the state.
- d. A person imports services without consideration for the purposes of his business from his elder son living outside India.

4. GST compliance rating shall be assigned to:

- a. only a person who is liable to deduct TDS / collect TCS.
- b. only a composition dealer.
- c. only an input service distributor.
- d. every registered person.

ANSWERS

FOR THE PREVIOUS EDITION

- 1. d.
- 2. a.
- 3. c.

Answers may be sent to icaiebulletin@gmail.com

Correct answers will be out in the next edition.

The names of the first five persons who give correct answers to all the questions, will also be published.



WORDS FROM THE HOLY BOOK

Bhagavad Gita

★ *There is nothing lost or wasted in this life.*

★ *Self-control is the Mantra of Success.*

★ *If you want to be Great, Think Great and Positive.*

★ *Love, tolerance, and selflessness should be practiced.*

★ *One who sees inaction in action, and action in inaction, is intelligent among men.*

★ *You came empty-handed, and you will leave empty-handed.*

★ *When meditation is mastered, the mind is unwavering like the flame of a lamp in a windless place.*



WORDS OF WISDOM

A person who is trying to copy others will be a successful person for a while, but he won't be able to succeed further in life.

Ups and downs in life are very important to keep us going because a straight line, even in an ECG, means we are not alive.

None can destroy iron, but its rust can. Likewise, none can destroy a person, but his own mind-set can.

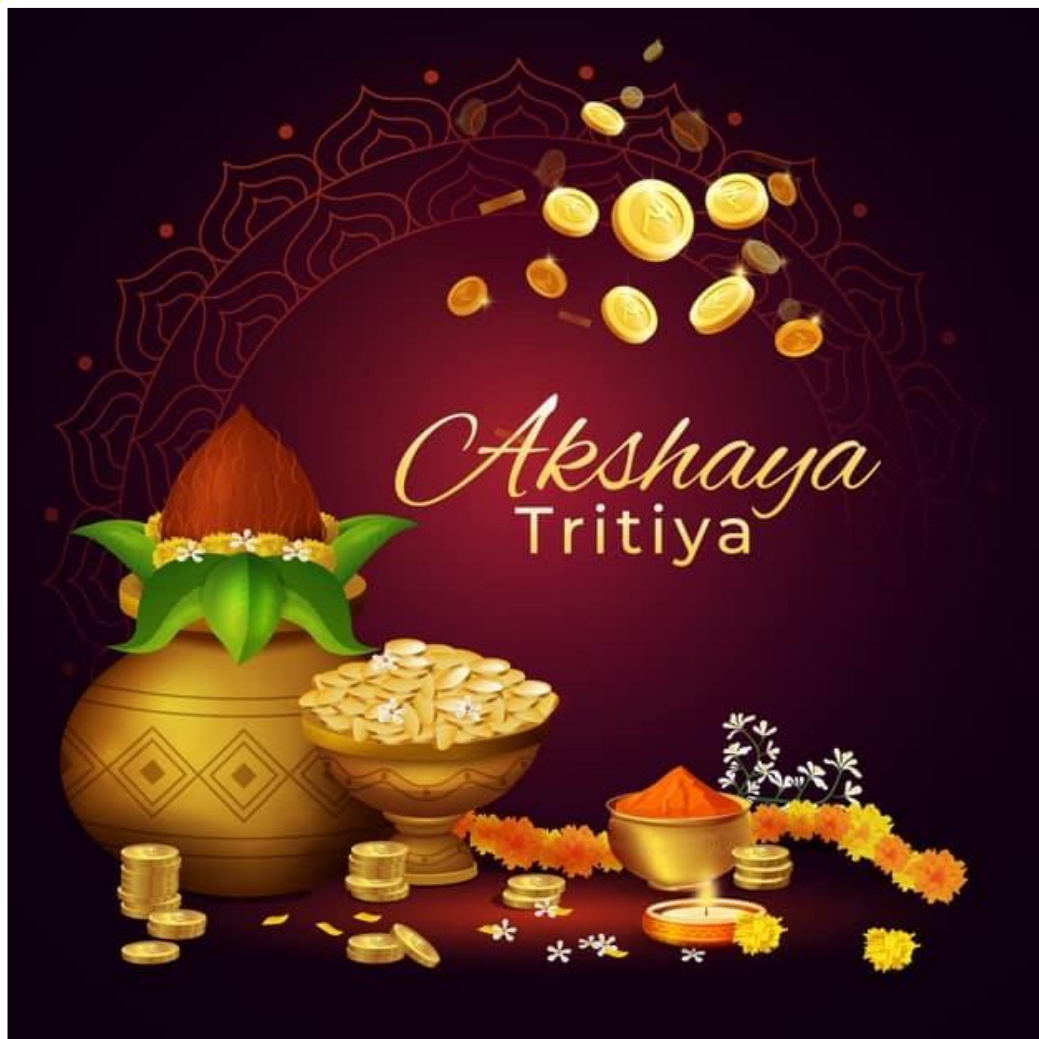
Business need to go beyond the interest of their companies to the communities they serve.

If you want to walk fast, walk alone. But if you want to walk far, walk together.

Ratan Tata

Don't be serious, enjoy life as it comes.

Take the stones people throw at you. And use them to build a monument.



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