

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : "F" NEW DELHI**

**BEFORE SHRI J.SUDHAKAR REDDY, A.M.  
AND SMT. SUCHITRA KAMBLE, JM**

**ITA No. 1085/Del/2009  
Assessment Year : 2002-03**

Purolator India Ltd. vs. DCIT, Circle 14(1)  
(Now known as Mahle Systems (India) Ltd. New Delhi  
1, Aurobindo Marg  
New Delhi

PAN: AAACP 5890 Q

**(Appellant)**

**(Respondent)**

**Revenue by:-** Shri Ajay Vohra, Sr.Adv. and  
Sh. Rohit Garg, Adv.

**Assessee by:-** Shri Raman Kant Garg, Sr.D.R.

**ORDER**

**PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

This is an appeal filed by the Assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals)-XVII, New Delhi dated 29.11.2007 pertaining to the Assessment Year (A.Y.) 2002-03. There is a delay of 407 days in filing of the assessee's appeal. The assessee filed an application for condonation of delay. The grounds on which the condonation of delay is sought, is extracted for ready reference.

*"In terms of sub section (3) of section 253 of the Act, the applicant was required to file appeal against the orders of CIT(A) before the Income-tax Appellate Tribunal within 60 days of the date on which the order of CIT(A) was communicated to the applicant. The limitation for filing the appeal before the Income-tax Appellate Tribunal, New Delhi, expired on 10-02-2008. The aforesaid appeal was filed by the applicant on 23-03-2009 and there was, therefore, a delay of 407 days in filing the same.*

*The applicant prays that the aforesaid delay in filing the above appeal may kindly be condoned exercising the discretion vested in the Hon'ble Tribunal under sub-section (5) of section 253 of the Act, for the reasons stated hereunder:*

*The tax matters of the applicant company at the relevant time were handled by Mr. Sachin Jain, Manager (Finance & Taxation). The appellate order for assessment year 2002-03 against assessment completed under section 147 of the Act, dated 29-11-2007, was received by Mr. Sachin Jain on 11-12-2007, who was also responsible for filing of the appeals to the appellate authorities.*

*During that period, however, the annual closing of accounts for the calendar year ended 31-12-2007, was in progress and Mr. Sachin Jain was involved in finalization of the annual accounts for the calendar year. Apparently, it seems that Mr. Sachin Jain kept the appellate order in the file, which, thereafter, remained untouched on account of pre-occupation and due to an oversight.*

*Mr. Sachin Jain, perhaps, did not realize the importance and implications for the applicant of the aforesaid order and inadvertently failed to inform the management about the receipt of the said order dated 29-11-2007, passed by the CIT(A).*

*Since the factum of receipt of order of CIT(A) was not brought to the knowledge of the directors/management, no appeal was filed against the aforesaid order of CIT(A). This fact went unnoticed and the time for filling appeal before the Tribunal lapsed.*

*Recently, when the penalty notice, dated 05-03-2009, for the relevant assessment year was received by the applicant. The applicant while going through its records for the assessment year 2002-03, for filing the reply to the penalty notice discovered that the appeal filed by the applicant before the CIT(A) had been disposed off by the CIT(A) vide order dated 29-11-2007, which was received by applicant company on 11-12-2007 and no appeal there against had been filed by the applicant.*

*Soon thereafter the applicant company initiated the process of preparing the appeal against the order of CIT(A), obtained professional/legal advice, and filed the appeal before the Tribunal on 23-03-2009.*

*The applicant submits that the above delay in filing the appeal was neither willful nor deliberate. The delay, as explained hereinabove, occurred on account of inadvertent lapse on part of Mr. Sachin Jain in informing the management about the receipt of the order of CIT(A) for the assessment year*

2002-03. An affidavit of the undersigned to this effect is being attached as Annexure - I.

*In the circumstances of the case, it will be appreciated that there was reasonable cause for the delay in filing the above appeal.*

*In our respectful submission, it was never the intention of the applicant not to agitate the above issue in appeal and the applicant did not want to give up its valuable right of appeal. The applicant, it is respectfully submitted, does not stand to gain from delay in filing the appeal, on the contrary, the applicant is prejudicially affected. The delay in filing the appeal, in the aforesaid circumstances, it is respectfully prayed, needs to be condoned.”*

**2.** The Ld. Sr. Advocate Shri Ajay Vohra representing the assessee submitted that the delay was unintentional and the explanation furnished by the assessee is reasonable and bonafide and that the delay should be condoned. He relied on the decision of Hon'ble Supreme Court in the case of Vedabai Alias Vajayanatabai Baburao Patil vs. Shantaram Baburao Patil, 253 ITR 798 and judgement in the case of Collector, Land Acquisition vs. Mst. Katiji, reported in 167 ITR 471.

**3.** Ld. Sr. D.R. Shri Raman Kant Garg strongly opposed the application for condonation of delay and submitted that this is a case of clear negligence on the part of the assessee. He submitted that reason given does not demonstrate bonafide cause for the delay. He argued that there is no reasonable cause shown by the assessee for the delay. He further submitted that against the very same order of the Ld.CIT(A) the department had filed the appeal in 2008 itself and the same was disposed of by the ITAT and there was no reason for the assessee to have filed an appeal with such huge delay. He relied on certain case laws in support of his contention that the delay should not be condoned.

**4.** After hearing rival contentions we are of the considered opinion that the assessee has not demonstrated that it was prevented by sufficient cause from filing the appeal in time. In the condonation application, it was stated that only on receipt of a penalty notice dt. 5.3.2009, the assessee verified the records and discovered that the Ld.CIT(A) had disposed of the appeal vide order dt. 29.11.2007 and subsequently it filed an appeal on 23<sup>rd</sup>

March, 2009. We find that the Revenue had filed an appeal against this order of the Ld.CIT(A) and this has come up for hearing before the Bench on 08<sup>th</sup> Feb., 2008. The assessee has filed its appeal against the same order on 24.3.2009. The assessee had represented its case in the revenue appeal and this revenue appeal was consolidated with ITA 5685/2004 for the A.Y. 2001-02 and ITA 1927/06 for the A.Y. 2002-03 on 17.12.2008. The revenue appeal ultimately was adjudicated on 5<sup>th</sup> August, 2009. In our view the reasons given by the assessee in its condonation application, do not constitute reasonable cause. This is a case of negligence. Thus we do not condone the delay on the facts of this case and hence the same is rejected.

**4.1.** Both sides have cited judicial precedents. As each case has to be examined on its facts, we keep the broad propositions laid down in these case laws and dispose of this appeal.

**5.** In the result the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 30<sup>th</sup> May, 2016.

Sd/-

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**(J. SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 30<sup>th</sup> May, 2016

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Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR;
- 6.Guard File

By Order

Asst. Registrar