

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ई, मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री एन. के. प्रधान, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri N.K. Pradhan, Accountant Member**

**ITA NO.7286/Mum/2014  
Assessment Year: 2010-11**

M/s Soven Trading and Investment Co. Pvt. Ltd. 142, Ghaswal Estate, S.V. Road, Jogeshwari (West), Mumbai-400102	<b>बनाम/ Vs.</b>	DCIT-8(3), Mumbai
(निर्धारिती / Assessee)		(राजस्व / Revenue)
<b>P.A. No. AAFCS0143Q</b>		

निर्धारिती की ओर से / Assessee by	Shri Ajay Singh
राजस्व की ओर से / Revenue by	Shri B.S. Bist-DR

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>14/02/2017</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>08/03/2017</b>

## **आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 27/10/2014 of the Ld. First Appellate Authority, Mumbai. The only ground raised in the present appeal pertains to affirming levying of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act) amounting to Rs.25,69,000/- on disallowance of business loss of Rs.83,12,481/-, declared by the assessee, which the assessee company had incurred during the relevant year.

2. During hearing, Shri Ajay Singh, ld. counsel for the assessee, contended that the Tribunal set-aside the quantum proceedings to the file of the First Appellate Authority for fresh adjudication vide order dated 07/08/2015 (ITA No.5476/Mum/2014), therefore, penalty may be deleted. On the other hand, ld. DR, Shri B.S. Bist, defended the imposition as well as confirming the penalty.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the aforesaid order of the Tribunal dated 07/08/2015 for ready reference and analysis:-

*“This is assessee’s appeal for A.Y. 2010-11, against the action of the ld. CIT(A)-18, Mumbai dated 18-07-2014, whereby he dismissed the assessee’s appeal filed before him, as belated by 174 days.*

**2. The Id. CIT(A) has held as follows:-**

*“3.1 I have considered the submissions of the appellant, order of the AO and facts of the case carefully. It is noticed that there was no reasonable cause for filing the appeal-late by 174 days. It is observed that the AR of the appellant has not given the reasons for filing the appeal late but more emphasis has been given on the decision of Honorable Courts stated above. Since the facts of the present case are totally different that there was no reasonable cause given by the assessee for filing the appeal late, therefore, the decision relied on are not helpful. To strengthen the view that delay for each day has to be explained by the appellant reliance is placed on the following decisions.*

*(a) State of Andhra Pradesh Vs. Venkataramana Chuduva & Murmura Merchant & Anr. (AP) 159 ITR 59 - High Court's order against the assessee later on reversed by Supreme Court since - High Court judgment was against the assessee it did not file appeal, but when SC decision came in its favour, it decided to file appeal - This is a reasonable cause for condonation of delay. But when assessment order was passed and limitation to file appeal over, even HC order was not there - Hence, there is no reasonable cause for delay in filing appeal.*

*(b) Rankak & Ors. Vs. Rewa Coalfields Ltd. AIR 1962 SC 361 and JCIT Vs. Tractors & Farm Equipments Ltd. (ITAT, Chennai-TM) 104 ITD 149 - Party has to show reason for delay on the last day of limitation period and thereafter for each day thereafter - Condonation is not a matter of right- Court has to exercise the discretionary jurisdiction.*

*(c) Collector Land Acquisition VS. Mst. Katiji (SC) 167 ITR 471, State of Haryana Vs. Chandra Mani 1996 AIR SC 1623 and G. Ramegowda Major Vs. Special land 1988 AIR SC 897-. Liberal approach to be taken in respect of appeals by Department. ITO Vs. Meghalaya Bonded Warehouse (Gau) 60 ITD 219 - Time taken to obtain certified copy of order can be excluded for computing period of limitation for filing appeal.*

*(d) Brij Inders Singh Vs. Kanshi Ram AIR 1917-PC-156, Baroda Rayon Copn. Ltd. (Guj) 87 STC 266, M. Krishna Rao D. Phalke vs. Trimbak AIR 1938 Nag. 156 and Baldeo Lal Roy vs. State of Bihar (1960) 11 STC 104 (Pat) - Delay in filing the appeal - cause for delay - whether the appellant has acted with reasonable diligence in the prosecuting of his appeal - to be looked into.*

*(e) Mrs. Anita Chadha Vs. CIT 189 Taxman 300 (Pb & Haryana) - Whether delay in filing of appeal beyond period of 120 days prescribed by Sec. 260A(2)(a) can be condoned by entertaining an, application u/s. 5 of Limitation Act, 1963 - Held - No.*

*(f) CIT Vs. Maharashtra State Government Employee Confederation Appeal No. CC3159-3160 of 2009 23.03.2009 (SC) - When the High Court has refused to condone delay of 562 days in filing appeal, we do not see any reason to interfere therewith, more so when the SLP have also delayed. SLP are dismissed both on ground of delay as also on merit."*

*3. The observations made by the Id. CIT(A) remain undisputed. However, according to the assessee, the reason for delay in filing the appeal before the Id. CIT(A) was that, after the receipt of the assessment order, the assessee company was under a bonafide belief that no penalty or any other consequences will follow and only after receipt of penalty order, the assessee company realized its mistake and filed the appeal and, this act of the assessee was due to ignorance of tax law and was not deliberate.*

*4. Having considered the above contentions of the assessee before the Id. CIT(A), we find the delay of 174 days in the filing of the assessee's appeal before the Id. CIT(A) to be a bonafide delay. Now, evidently, the factual matrix, as delineated in the submissions before the Id. CIT(A), explains the bonafides of the assessee and obviously, it cannot stand to gain by intentionally delaying the filing of its appeal. Initially, the*

*assessee did not file appeal against the Assessment Order, since there was no tax demand. The assessee was accordingly of the bonafide belief that no penal or other consequences would follow. It was only the passing of the penalty order, which, according to the assessee, necessitated the filing of the quantum appeal. Moreover, no malafide intention can be ascribed to the assessee, in view of the above facts, for delaying the filing of the appeal. The Id. CIT(A) should have considered the reason given to be sufficient cause which prevented the assessee from filing the appeal within time.*

*5. In view of the above, we set aside the order of the Id. CIT(A) and remit the matter to him with a direction to condone the delay of 174 days in the filing of the assessee's appeal and to decide the matter afresh on merits in accordance with law, on affording due opportunity of hearing to the assessee. The assessee shall cooperate in the remand proceedings.*

*6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes."*

2.2. We find that in the aforesaid order the Tribunal condoned the delay and directed the First Appellate Authority to decide the matter afresh on merit in accordance with law and further afford opportunity of hearing to the assessee. In view of this factual matrix, we are of the view that this penalty appeal should also go to the file of the Ld. Commissioner of Income Tax (Appeal) to be decided afresh in accordance with law. Needless to mention here that the assessee be provided due opportunity of being heard. The assessee is at liberty to furnish necessary evidence, if any, in support of its claim. So

far as, the contention of the ld. counsel for the assessee that penalty may be deleted, we are not agreeing with such a request, because, on the basis of outcome of the quantum appeal, the penalty will be decided. However, the Ld. Commissioner of Income Tax (Appeal) is free to consider the decision from Hon'ble jurisdictional High Court in ITA No.1154 of 2014, etc. order dated 05/01/2017 in the case of CIT vs Shri Samson Perinchery, along with other cases, while adjudicating the appeal of the assessee. Thus, this appeal of the assessee is also set-aside to the file of the Ld. Commissioner of Income Tax (Appeal) for fresh adjudication in accordance with law.

Finally, the appeal of the assessee is allowed for statistical purposes.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 14/02/2017.

*Sd/-*

(N.K. Pradhan)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 08/03/2017

*Shekhar, P.S/निजी सचिव*

*sd/-*

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai,**