

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “J”,MUMBAI
BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.4195/Mum/2016 for (Assessment Year : 2012-13)

Mr. Vishwanath K. Acharya A-1601, Rustomjee Elanza CHS Ltd. Malad-W, Off New Link Road, Mumbai-400064 PAN: AAGPA0144D	Vs.	ACIT Ward- 16(1), 4 th Floor, Aayakar Bhavan, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Shri B. N. Rao (AR)
Revenue by : Shri Sambit Mishra (DR)
Date of hearing : 14.02.2017
Date of Pronouncement : 24.02.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JM:

1. This appeal by assessee u/s 253 of the Income Tax Act (the Act) is directed against the order of Id. CIT(A)-4, Mumbai dated 05.04.2016 for Assessment Year (AY) 2012-13. The assessee has raised the following grounds of appeal:
 1. *The Id. C.I.T. Appeals erred in dismissing the appeal citing the reason advanced for condonation of delay as untenable. He ought to have considered the facts submitted before him in the interest of natural justice.*
2. The facts leading to file the present appeal are that the assessee filed appeal before the Id. CIT(A) challenging the various additions and disallowance made by Assessing Officer (AO) in assessment order under section 143(3) dated 27.02.2015. The assessee filed the appeal beyond the prescribed period of time. There was delay of 265 days in filing appeal before Id CIT(A). The delay was not condoned by Id CIT(A), consequently the appeal was not admitted. Thus, aggrieved by the order of Id. CIT(A), the present appeal is filed before the Tribunal.

3. We have heard the Id. Authorized Representative (AR) of the assessee and the Id. Departmental Representative (DR) for the Revenue and perused the order of Id. CIT(A). The Id. AR of the assessee argued that the assessment order dated 27.02.2015 was collected directly by the representative of previous Chartered Accountant (C.A.) from office of AO on 09.03.2015. The previous C.A. did not inform the assessee nor advise the assessee to file the appeal before the First Appellate Authority (FAA) and that the assessee was not aware about the technicalities of filing appeal within the prescribed period of limitation. The assessee came to know about the assessment order for AY 2012-13 only when the AO during the assessment proceeding for AY 2013-14, the AO enquired about the assessment order of previous year. The assessee thereafter, contacted his previous C.A. and collected the order from previous C.A. and thereafter, the appeal was filed before the Id. CIT(A). Thus, the delay occurred in filing appeal before the FAA. The Id. AR of the assessee further argued that the delay was neither intentional nor deliberate but due to the circumstances beyond his control. The Ld. AR of the assessee further argued that the assessee has good case on merit is likely to succeed, if the case of assessee is heard and the case is decided on merit. On the other hand, Id. DR for the Revenue strongly opposed the ground of appeal raised before us. Ld. DR further argued that assessee was required to explain the delay of each and every day. The assessee was failed to explained the delay before the Id. CIT(A). Thus, Id. CIT(A) has rejected the contention of assessee for condoning the delay in filing the appeal.. The Id. DR for the Revenue further argued that despite the direction of the Court, the assessee is not file his own affidavit or affidavit of C.A. who represented the assessee before the AO or who had allegedly collected the order directly from the office of AO.
4. We have considered the rival contention of the parties and further gone through the order of Id. CIT(A). The assessment order u/s 143(3) was passed on 27.02.2015 and the appeal before the Id. CIT(A) was filed only on 30.12.2015. Thus, apparently the appeal was not within the prescribed period of limitation. The First Appellate Authority asked the assessee to explain the delay. The assessee filed his reply vide clarification letter dated 18.11.2016. In the reply, the assessee contended that the assessment order was collected by his previous representative on 09.03.2015. His representative did not inform him nor advise him to file the appeal. The assessee was

not well-versed with the tax law. The assessee came to know about the assessment order for AY 2012-13 during the assessment proceeding for AY 2013-14, when the AO enquired about the order for previous AY. The contention of assessee was not accepted by Id. CIT(A) holding that it was a responsibility of the assessee to file the appeal within the prescribed period of limitation. The assessee has not made any effort to file the appeal within time. The assessee has not filed any evidence that there was dispute between him and his previous C.A. The assessee has not taken any action against the previous CA nor such evidence as to whether any legal action is taken against the C.A. , was placed on record and dismissed the appeal. During the hearing of this appeal, we enquired from the AR as to why the affidavit of assessee or the C.A. is not file before the Tribunal. The Id. AR of the assessee fairly conceded that due to social relation with the C.A., the assessee has not made any complaint or asked him to give affidavit against his negligent Act.

5. We are conscious that the law of limitation is Substantive Law and it has defined consequences on the right and obligation of the parties. The provisions and the principle contained in the law of limitation should be adhered by the parties in its strict sense as provided under different provisions of Limitation Act. The Hon'ble Apex Court in *B. Madhuri Goud v. B. Damodar Reddy* (2012) 12 SCC 693 while discussing the scope of Section 5 of Limitation Act (for condonation of delay in filing of appeal) set the following principles, which may broadly be kept in kind while deciding the application for condonation of delay:

- i) *There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalize injustice but are obliged to remove injustice.*
- ii) *The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
- iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

- vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted, That, apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
- x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
- xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation,*
- xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception,*
- xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

Further, the Hon'ble Apex Court laid down more guidelines of delay such as:

- a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- b) *An application for con donation of delay should not he dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto. .*
- d) *The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.*

6. From the legal position referred above, we may conclude that there should be pedantic approach and the doctrine that is to be kept in mind that the appeal has to be deal with rational common sense and the cause of substantial justice must be kept in mind. We are also aware that the substantial justice must be preferred over the technical consideration. We may also observed that the appellant/assessee is not going to gain in approaching the court after expiry of period of limitation, rather there is always a chance that his appeal may be dismissed, for not explaining the cause of delay in filing the appeal. We, instead of making any comment over the reason for condonation of delay and not filing affidavit or not taking any legal action against the

representative, who has allegedly neither informed the assessee nor handed over the copy of assessment order. However, keeping in view the Principle of Natural Justice and to provide the assessee an opportunity of hearing on merit, we deem it appropriate to accept the appeal of assessee. We further order to condone the delay in filing the appeal before the Id. CIT(A).

7. With these observations, the Id. CIT(A) is allowed. The Id CIT(A) is directed to decide the appeal of assessee on merit in accordance with law. Needless to say that assessee shall be given sufficient opportunity before passing the order of merit. The assessee has also directed to fully co-operate with Id. CIT(A) and provide all necessary information and documents and not to seek adjournment without any valid reasons.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 24th February, 2017.

Sd/-

(D.KARUNAKARA RAO)
ACCOUNTANT MEMBER

Mumbai; Dated 24/02/2017

S.K.PS

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai