

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'C' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री अब्राहमपी.जॉर्ज, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.697/Mds/2016

निर्धारण वर्ष / Assessment Year : 2008-09

Shree Ganesh Ventures,  
No.14-A, Ennore High Road,  
Chennai – 600 019.

v. The Assistant Commissioner of  
Income Tax, Business Circle XII,  
Chennai.

PAN : AAOFS 0487 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T.Banusekar, C.A.

प्रत्यर्थीकीओरसे/Respondent by : Shri A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of Hearing : 05.10.2016

घोषणाकीतारीख/Date of Pronouncement : 30.11.2016

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of CIT(A) -5, Chennai dated 18.01.2016 and pertains to assessment year 2008-09.

2. Shri T.Banusekar, the learned representative for the assessee submitted that there was a delay of 154 days in filing the appeal before the CIT(A). The assessee filed an application to condone the delay before the CIT(A) along with a certificate issued by medical practitioner. According to the learned representative for the assessee, the assessee was suffering from hyper tension and diabetes and the doctor advised him to take rest. Referring to the copy of the medical certificate said to be issued by Dr.Syed Md.Thufail Ahmed, the assessee was asked to take rest for a period from 20.12.2010 to 22.05.2011. Therefore, the assessee could not file the appeal before the CIT(A) within the specified period. According to the learned representative for the assessee, there was a reasonable cause on the part of the assessee for not filing the appeal before the CIT(A). In fact, the assessee was prevented from filing appeal before the CIT(A). Therefore, the delay of 154 days in filing appeal before the CIT(A) may be condoned and the matter may be remitted back to the file of the CIT(A) for re-consideration.

3. On the contrary, Shri A.V.Sreekanth, the learned department representative submitted that there was no reasonable cause on the part of the assessee for not filing the appeal before the CIT(A) within specified time period. Referring to the order of the CIT(A), the learned

department representative submitted that if the managing partner of the assessee was not well, the other partners could have signed the appeal papers. Therefore, there was no reason for not filing the appeal before the CIT(A). Hence, the CIT(A) has rightly confirmed the order.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was a delay of 154 days in filing the appeal before the CIT(A). The assessee claims that the managing partner of the assessee was suffering from hyper tension and diabetes and he was advised to take rest from 20.12.2010 to 22.05.2011. Though hyper tension and diabetes may not be a serious disease, depending upon the facts of the case, the medical practitioner advised the assessee to take rest from 20.12.2010 to 22.05.2011. The medical practitioner after examining the assessee found that the absence from duty is absolutely necessary for restoration of the health of the managing director of the assessee. This fact is not in dispute. Therefore, this Tribunal is of the considered opinion that the assessee is prevented from sufficient cause from filing the appeal within the specified period.

5. Moreover, the very object of the proceedings under the Income Tax Act is to assess the taxable income and levy tax thereon and collect the taxes. Therefore, taking a liberal view in condoning the delay may not prejudice the interest of the revenue in any way. Merely because, there was a delay in filing of appeal, the revenue cannot take advantage of that fact and keep the tax payer's money. The object, prescription, limitation in filing the appeal is not to disturb a right vested on a particular person. In the case before us, tax on the income can be levied only in accordance with law. If the tax cannot be levied in accordance with law, the department cannot retain a single pie of the assessee merely because there was a delay in filing the appeal. Therefore, condoning the delay in filing the appeal may not prejudice the interest of the revenue in any way. This Tribunal is of the considered opinion that condoning the delay of 154 days in filing the appeal before CIT(A) would promote the cause of justice and also increase the confidence of the litigant public on the judicial system. In view of the above, the delay of 154 days in filing appeal before the CIT(A) is hereby condoned. Accordingly, the order of the CIT(A) is set aside. Now, the appeal of the assessee stands restored on the file of the CIT(A). The CIT(A) shall consider the appeal of the assessee on

merit and dispose of the same in accordance with law after giving a reasonable opportunity to the assessee.

6. In the result, the appeal of the assessee is allowed.

Order pronounced on 30<sup>th</sup> November, 2016 at Chennai.

Sd/-

(अब्राहमपी.जॉर्ज)

**(Abraham P. George)**

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

**(N.R.S. Ganesan)**

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 30<sup>th</sup> November, 2016.

sp.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.