

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1844/KOL/ 2016
Assessment Year: 2002-2003**

***M/s. Zenith Exports Limited,.....Appellant
19, R.N. Mukherjee Road,
Kolkata-700 001
[PAN: AAACZ 0986 F]***

-Vs.-

***Assistant Commissioner of Income Tax,.....Respondent
Circle-5, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069***

Appearances by:

Shri Manish Tiwari, F.C.A., for the assessee

Shri Dulal Chandra Mondal, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : December 20, 2016

Date of pronouncing the order : December 21, 2016

O R D E R

This appeal is filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals)-2, Kolkata dated 05.07.2016, whereby he dismissed the appeal of the assessee *in limini* by treating the same as barred by limitation.

2. The assessee in the present case is a Company, which is engaged in the business of Export of Industrial Leather Hand Gloves, Silk Fabrics & Made-ups and Manufacturing of Yarns, Ready-made Garments and 100% Natural Silk Fabrics. The return of income for the year under consideration was filed by it on 30.10.2002 declaring a loss of Rs.2,91,970/-. The said return was initially processed by the Assessing Officer under section 143(1) on 13.02.2003. Subsequently he, however, noticed that there was escapement of income of the assessee for the year

under consideration and accordingly a notice under section 148 was issued by him on 31.03.2009 reopening the assessment after recording the reasons. Pursuant to the said notice, assessment under section 147/143(3) was made by the Assessing Officer vide an order dated 31.12.2009, wherein the claim of the assessee for deduction under section 10B was disallowed.

3. Against the order passed by the Assessing Officer under section 147/143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the said assessment as well as disputing the disallowance made therein on account of its claim for deduction under section 10B on merit. Since there was a delay of above 40 days in filing the said appeal, an application seeking condonation of the said delay was also filed by the assessee along with its appeal. During the course of appellate proceedings before the Id. CIT(Appeals), the Id. Authorized Representative of the assessee appeared and argued the case of the assessee. According to the Id. CIT(Appeals), he, however, did not advance any argument on the issue of delay on the part of the assessee in filing the said appeal. The Id. CIT(Appeals), therefore, rejected the application of the assessee for condonation of the delay and dismissed the appeal of the assessee *in limini* by treating the same as barred by limitation. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. counsel for the assessee, an application dated March 15, 2010 was filed by the assessee along with its appeal before the Id. CIT(Appeals) seeking condonation of the delay in filing the said appeal. A copy of the said application is also placed on record before me by the Id. counsel for the assessee and a perusal of the same shows that the marginal delay in filing its appeal before the Id. CIT(Appeals) was explained therein giving reasons for the said delay. In these circumstances, I am of the view that

the Id. CIT(Appeals) ought to have given an opportunity to the Id. A.R. of the assessee to plead the case of the assessee on this issue, even though it was inadvertently left to be argued by him or atleast should have disposed of the application for condonation of delay filed by the assessee on merit. Since the Id. CIT(Appeals) has failed to do so, I consider it fair and proper and in the interest of justice to set aside the impugned order passed by the Id. CIT(Appeals) and remit the matter back to him for disposing of the appeal of the assessee afresh after considering the request of the assessee for condonation of delay on merit in accordance with law.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on December 21, 2016.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 21st day of December, 2016

Copies to : (1) ***M/s. Zenith Exports Limited,
19, R.N. Mukherjee Road,
Kolkata-700 001***

(2) ***Assistant Commissioner of Income Tax,
Circle-5, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069***

(3) ***Commissioner of Income Tax(Appeals)-2, Kolkata;***
(4) ***Commissioner of Income Tax- ,***
(5) ***The Departmental Representative***
(6) ***Guard File***

***By order
Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.