

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

ITA No.2877/Mum/2015 for (Assessment Year : 2010-11)

M/s Shoreline Infrastructure Developers Pvt. Ltd., 209, Om Chambers, 123, August Kranti Marg, Kemps Corner, Mumbai-400036 PAN: AACCM7960N	Vs.	I.T.O. 5(3)(2) Room No. 526, 5 th Floor, Aayakar Bhavan, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Ms. Aarti Vissanji (AR)

Revenue by : Shri Saurabh Kumar Rai
(DR)

Date of hearing : 22.02.2017

Date of Pronouncement : 22 .02.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JM:

1. This appeal u/s 253 of the Income Tax Act (the Act) is directed against the order of ld. CIT(A)-10, Mumbai dated 02.02.2015 for Assessment Year (AY) 2010-11. The assessee has raised the following grounds of appeal:
 1. *The CIT(A) erred in not condoning the delay of 9 Months in Filing Appeal the Appeal.*
 2. *The CIT(A) erred in holding that there was no reasonable cause for the delay.*
2. The facts leading to file the present appeal are that the assessment order u/s 143(3) of the Act was passed on 19.03.2013, determining the income of assessee at Rs. 2,85,55,600/-. The assessee filed appeal before the ld. CIT(A). However, the appeal of assessee was dismissed by ld. CIT(A) holding that the assessee filed the appeal after 10 months beyond the period of limitation and thus was barred limitation.. Aggrieved by the order of ld. CIT(A), this appeal is filed before the Tribunal.
3. We have heard the ld. Authorized Representative (AR) of the assessee and ld. Departmental Representative (DR) for the Revenue and gone through the order of ld.

CIT(A). The Id. AR of the assessee today filed the copy of affidavit of Shri Ajay Hanumanprasad Khemka, Managing Director of the assessee-company. In the affidavit, the deponent has stated that the assessee-company is engaged in the business of Civil Contract with NPCC for construction of Power Plant for BHEL. The contract of the assessee-company was cancelled and Bank Guarantee of Rs. 3.50 Crore was invoked. The Business account of the assessee was declared NPA by his Bankers and the assessee remained busy in handling the Arbitration Case and to defend the other cases filed on behalf of or against the assessee-company. The other Director of the Company is the wife of deponent, who does not take active part of the business. Due to collapse of Business, no Manager was employed during the period. The Income-Tax assessment for the year under consideration was not shown to him by his tax consultant. The deponent/Managing Director of the Company came to know about the assessment order only in September 2013 when notice of penalty u/s 271(1)(c) was served. The Id. AR of the assessee further argued that there was sufficient cause for condoning the delay. The delay was properly explained before the Id. CIT(A) and it was not considered sympathetically. The assessee has good case on merit and is likely to succeed, if the assessee is given opportunity of hearing on merit of the case. The assessee was prevented by sufficient reason in not filing the appeal in time before Id CIT(A). On the other hand, Id. DR for the Revenue strongly opposed the grounds of appeal. The Id. DR for the Revenue argued that from the affidavit filed today, it is evident that assessee was actively contesting or defending the case before the other Forum. However, no sufficient cause for filing appeal within the prescribed period of limitation was explained before the Id. CIT(A). The Id. DR for the Revenue further argued that the cause of delay as explained by Id. AR of the assessee is not sufficient for condoning the delay and that the appeal is liable to be dismissed with cost.

4. We have considered the rival contention of the parties and gone through the order of Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee holding that assessment order was passed on 19.03.2013. The appeal was filed 10 Month beyond the prescribed period of limitation. The Id. CIT(A) observed that in the application for condonation of delay dated 28.03.2013, the Id. AR of the assessee contended that assessee was busy in contesting Arbitration Case in other cases related with the

cancellation of contract. The staff of the assessee-company, who had received the assessment order, concealed the fact from Director as the Company was unable to pay its salary in time due to financial constraint. The consultant of the assessee-company failed to enquire about the assessment order due to ill health problem of his parents. The ground for condonation of delay application was not allowed by Id. CIT(A) holding that there was no genuine reason, no documentary evidence is filed about the illness of parents of consultant or the details of employee who received the assessment order.

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 taking any legal action against the staff of assessee company, 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 ld. CIT(A) is allowed. The ld 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 ld. 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 22nd February, 2017.

Sd/-

(D.KARUNAKARA RAO)
ACCOUNTANT MEMBER

Mumbai; Dated 22 /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