

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"D " BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. Nos.3116 & 3117/Mds/2014**
(निर्धारण वर्ष / Assessment Years : 2007-2008 & 2008-2009)

M/s. Wardex Pharmaceuticals
Pvt. Ltd,
No.56, Nelson Manickam Road,
Aminjikai,
Chennai 600 029.

The ACIT,
Vs Company Circle III(3),
Chennai 600 034.

[PAN: AAACW 1036D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. J. Chandrasekaran, C.A.
प्रत्यर्थी की ओर से / Respondent by : Shri. N. Madhavan, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 25.06.2015
घोषणा की तारीख /Date of Pronouncement : 25.06.2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These appeals by assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-III, Chennai, dated 22.01.2014 for the above assessment years.

2. The common ground in this appeal is with regard to treatment of subsidy received by the assessee from the Government of West Bengal under a scheme formulated by it as revenue receipt. The Assessing Officer in this case considered the subsidy received from the Government of West Bengal as revenue receipt by following the earlier year order of the Tribunal in assessee's own case dated 28.09.2009 in *ITA No.366/Mds/2009* and the judgment of Supreme Court in the case of *Sahney Steel and Pres Works Ltd vs. CIT, 228 ITR 253(SC)*. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

3. On appeal, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. Against this, the assessee is in appeal before us.

4. There was a delay of 201 days in filing of appeals before the Tribunal. The assessee filed an affidavit explaining the reason for delay as follows:-

1. *That the due date of filing appeal paper before the Income Tax Appellate Tribunal is 11.06.2013 for the assessment years 2007-2008 and 2008-2009.*
2. *That the singed copies of the appeal papers were given to branch accountant at Chennai for filing.*
3. *That we were under the bonafide belief that the branch accountant would have filed the appeals.*
4. *That the branch accountant suddenly left the job and the appeal papers kept by him could not be traced.*

5. *That we came to know that the appeal papers were not filed with the appellate tribunal, only now.*
6. *Hence, we are filing the appeal before the Income Tax Appellate Tribunal now.*

5. We have carefully gone through the reasons advanced for the delay in its affidavit. There is nothing on record to indicate who is the assessee's branch accountant at Chennai and to whom the appeals papers were given. Further, the assessee had an impression that the accountant would have filed the appeal papers. It was stated that the branch accountant suddenly left the job. However, there is no indication when he had left the job and how the assessee has formed such an impression. The assessee has also not stated when it came to its knowledge that the appeals were filed. The affidavit filed by the assessee which was made bald statement. On going through the above facts, it was found that there exist no sufficient cause for the delay. In the case of *Sreenivas Charitable Trust vs DCIT, 280 ITR 357*, wherein the assessee was a charitable trust. The copy of the order served on the assessee was misplaced and thereafter it was found and sent to the counsel for preparing the appeal and then the appeal was prepared and filed before the Tribunal and in that process the delay of 38 days occurred. The delay of 38 days was condoned by the Supreme Court in view of the decision of the Supreme Court

rendered in the case of *Vedabai alias Vaijayanatbai Bahurao Patil vs Shantaram Baburao Patil*, 253 ITR 798, in this case it was held that in exercising discretion under section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in considering the expression 'sufficient cause' the principle of advancing substantial justice is of prime importance. It is pertinent to note that in the case of *Collector Land Acquisition vs. Mst. Katiji* 167 ITR 471, the delay was only four days. In the case of *Vedabai alias Vaiyananatabai Badurao Patil* (supra) there was a delay of seven days in filing the appeal. In this case the Supreme Court clearly laid down that a distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. The law assists those who are vigilant, not those who sleep over their rights. This principle is embodied in the dictum: *vigilantibus non dormientibus jura*

subveniunt. The delay cannot be condoned simply because the assessee's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay it must be proved beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The Supreme Court in the case of *Ramlal vs. Rewa Coalfields Ltd. AIR 1962 SC 361* has held that the cause for the delay in filing the appeal which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, nor inaction, or want of bonafides can imputed to the assessee a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands. In the present case, the assessee failed to justify the reason for the delay and the reason advanced by the assessee clearly state the reason was due to the negligence and inaction on the part of the assessee. The assessee could have very well avoided the delay by exercise of due care and attention. In our opinion, there exists no sufficient reason for the delay of 201 days. We, therefore decline to condone the delay and

accordingly dismiss the appeals as unadmitted.

6. In the result, the appeals of the assessee in ITA Nos.3116 & 3117/Mds/2014 are dismissed.

Order pronounced on Thursday, the 25th day of June, 2015, at Chennai.

Sd/-

(चल्ला नागेन्द्र प्रसाद)

(CHALLA NAGENDRA PRASAD)

न्यायिक सदस्य/ JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:25.06.2015.

KV

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.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER