

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 167/Del/2015  
Assessment Year: 2011-12

GARDEN SILK MILLS LIMITED, VS. ITO, WARD 50(5),  
TULSI KRUPA ARCADE, NEW DELHI  
DUMBHAL,  
SURAT - 395010  
(GUJARAT)  
(PAN: AAACG8932C)

**(APPELLANT)**

**(RESPONDENT)**

Assessee by : Ms. Meena Mittal, CA  
Revenue by : Sh. Arun Kumar Yadav, Sr. DR

**ORDER**

**PER H.S. SIDHU, JM**

This appeal has been filed by the Assessee against the Order dated 03.11.2014 of the Ld. Commissioner of Income Tax (Appeals)-XXV, New Delhi relevant to assessment year 2011-12.

2. The grounds raised in the appeal read as under:-

- 1. On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad in law.*
- 2. On the facts and circumstances of the case in law Ld. CIT(A) erred in not condoning the alleged delay in filing appeal on the appellant on the ground that there is a want of reasonable cause.*

*3. On the facts and circumstances of the case in law Ld. CIT(A) erred in not condoning the delay in the interest of substantial justice as assessee had a very strong case on merit.*

*4. On the facts and circumstances of the case in law Ld. CIT(A) erred in ignoring the fact that on merit there is no liability on the assessee to pay any interest on tax u/s. 201(1)/201(1A) as explained in detail in the statement of facts submitted before him.*

*5. On the facts and circumstances of the case in law Ld. CIT(A) ignored the finding of the AO mentioned in the assessment order that at present Sh. Rajesh, Tea vendor told the Inspector that M/s Garden Silk Mills Limited has left the above premises near about 9-10 years ago and accordingly order was served by a fixture on 29.11.2012 and ignored further facts mentioned by him in the impugned appellate order that counsel of the assessee was personally served the order on 10.4.2013, which two facts alone should be accepted as a constituting reasonable cause.*

*6. The appellant craves to add, modify, delete or withdraw any ground of appeal.*

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. During the hearing, Ld. A.R. of the assessee has filed a Paper Book containing pages 1-54 in which she has attached the copy of the assessment order dated 30.11.2012 for AY 2011-12 passed u/s. 201(1)/201(1A) of the I.T. Act, 1961; Form No. 35 together with

grounds of appeal filed by the appellant before CIT(A), New Delhi dated 7.5.2013 for AY 2011-12; Appellate order dated 3.11.2014 passed by the CIT(A)-25, New Delhi vide Appeal No. 231/2014-15 (Old A. No. 378/13-14 CIT(A)-XXX; Form No. 36 filed against order u/s. 263 before the ITAT in appeal no. 167 of 2015 on 8.1.2015 together with grounds of appeal and tax challan receipt; facts of non-delivery of notice and order of AO passed u/s. 201/201AA and consequently delay in filing of appeal to CIT(A)-25, New Delhi; copy of request of condonation of delay filed before Ld. CIT(A)-XXX, New Delhi dated 6.5.2013 for AY 2011-12; appellate order dated 26.8.2015 passed by CIT(A)-35, New Delhi vide appeal no. 61/2014-15 for AY 2010-11 passed in favour of assessee on same subject matter; judgement of Hon'ble Supreme Court of India in State of MP vs. Pradeep Kumar dated 12.9.2000 in Appeal (Civil) 4994 of 2000; copy of ITAT, Hyderabad in Sri Surakshita Homes. Vs. ITOP in ITA No. 1570/Hyd/2013 dated 31.8.2009. During the hearing, Ld. A.R. of the assessee has draw our attention towards page no. 30 & 31 which is a copy of letter dated 6.5.2013 addressed to the Ld. CIT(A) by the assessee, requesting therein for condoning the delay in filing the appeal before him and stated Ld. CIT(A) has not considered the said request and did not condone the limitation period and dismissed the appeal of the assessee. She further draw our attention towards page nos. 47 to 51 i.e. the judgment of the Hon'ble Supreme Court of India in State of MP vs. Pradeep Kumar

dated 12.9.2000 in Appeal (Civil) 4994 of 2000 and requested that in view of the aforesaid judgment of the Hon'ble Supreme Court of India, the matter may be set aside to the file of the Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee and directed him to first condone the delay in dispute and decide the appeal on merit.

5. On the contrary, Ld. DR relied upon the orders of the authorities below.

6. We have heard both the parties and perused the records, especially the orders of the authorities below. We find that Ld. A.R. of the assessee has filed a Paper Book containing pages 1-54 in which she has attached the copy of the assessment order dated 30.11.2012 for AY 2011-12 passed u/s. 201(1)/201(1A) of the I.T. Act, 1961; Form No. 35 together with grounds of appeal filed by the appellant before CIT(A), New Delhi dated 7.5.2013 for AY 2011-12; Appellate order dated 3.11.2014 passed by the CIT(A)-25, New Delhi vide Appeal No. 231/2014-15 (Old A. No. 378/13-14 CIT(A)-XXX; Form No. 36 filed against order u/s. 263 before the ITAT in appeal no. 167 of 2015 on 8.1.2015 together with grounds of appeal and tax challan receipt; facts of non-delivery of notice and order of AO passed u/s. 201/201AA and consequently delay in filing of appeal to CIT(A)-25, New Delhi; copy of request of condonation of delay filed before Ld. CIT(A)-XXX, New Delhi dated 6.5.2013 for AY 2011-12; appellate order dated 26.8.2015 passed by CIT(A)-35, New Delhi

vide appeal no. 61/2014-15 for AY 2010-11 passed in favour of assessee on same subject matter; judgement of Hon'ble Supreme Court of India in State of MP vs. Pradeep Kumar dated 12.9.2000 in Appeal (Civil) 4994 of 2000; copy of ITAT, Hyderabad in Sri Surakshita Homes. Vs. ITOP in ITA No. 1570/Hyd/2013 dated 31.8.2009. We have perused the page no. 30 & 31 which is copy of letter dated 6.5.2013 addressed to the Ld. CIT(A) by the assessee requesting therein for condoning the delay in filing the appeal before him. We also perused the page nos. 47 to 51 i.e. the judgment of the Hon'ble Supreme Court of India in State of MP vs. Pradeep Kumar dated 12.9.2000 in Appeal (Civil) 4994 of 2000. We further perused the finding of the Ld. CIT(A) given in the impugned order dated 03.11.2014 vide para no. 3 & 4 wherein the Ld. CIT(A) has observed as under:-

"3. The submission of the appellant as above is carefully considered. I do not see any force in the plea of presenting the appeal belatedly. The delay is therefore not condoned for want of 'reasonable cause'.

4. Accordingly the appeal of the appellant is Dismissed."

6.1 Keeping in view of the facts and circumstances of the case, as explained above and in view of the judgment of the Hon'ble Supreme

Court of India in the case of State of MP vs. Pradeep Kumar dated 12.9.2000 in Appeal (Civil) 4994 of 2000, as aforesaid, we direct the Ld. CIT(A) to condone the delay in dispute. And also in the interest of justice, we set aside the issues in dispute to the file of the Ld. CIT(A) with the directions to decide the same afresh, under the law, after giving adequate opportunity of being heard to the assessee and decide the appeal on merit and pass a speaking order. The Assessee is also directed to fully cooperate with the Ld. CIT(A) in the proceedings and did not take any unnecessary adjournment and produce all the documents/evidences filed before the Ld. CIT(A) to substantiate his case.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced in Open Court on this 11-10-2017.

**Sd/-**

**(L.P. SAHU)  
ACCOUNTANT MEMBER**

**Dated : 11-10-2017**

SR BHATANGAR

**Copy forwarded to:**

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

**Sd/-**

**(H.S. SIDHU)  
JUDICIAL MEMBER**

AR, ITAT  
NEW DELHI.

