

आयकर अपीलीय अधिकरण, 'सी', न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 2438/Mds/2017  
निर्धारण वर्ष /Assessment year : 2008-2009.

Shri. R. Munusamy,  
No.834A, Mettu Street,  
Ayapakkam Village (Post)  
Kalpakkam 603 102.

**Vs.** The Income Tax Officer,  
Non Corporate Circle 5(5)  
Chennai 600 006.

[**PAN AVPPM 5917N**]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. P. Ranga Ramanujam and  
K.R. Ganesh, C.As

प्रत्यर्थी की ओर से /Respondent by : Shri. B. Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 03-1-2018

घोषणा की तारीख /Date of Pronouncement : 05-1-2018

**आदेश / ORDER**

Assessee in this appeal assails an order dated 24.08.2017 of  
Id. Commissioner of Income Tax (Appeals)-8, Chennai.

2. Among the five grounds raised by the assessee, ground No.2  
assails non condonation of nine days delay by Id. Commissioner of

Income Tax (Appeals) in filing the appeal. This ground is reproduced hereunder:-

*'2. The learned Commissioner of Income Tax (Appeals) has grossly erred in not granting the condonation for short delay of 9 days occurred in filing the appeal before the Id. Commissioner of Income Tax (Appeals), by dismissing the application as barred by limitation. The Id. Commissioner of Income Tax (Appeals) has thereby failed to follow the principles of natural justice in deciding the appeal.*

Ld. Commissioner of Income Tax (Appeals) while disposing of the appeal of the assessee, after reproducing the written submission filed by the assessee, held as under:-

*'6 Delay in filing the appeal not condoned:*

*6.1 The Assessing officer passed the order u/s 143(3) of the IT Act, 1961 on 30/3/2016. As per Form No 35, the appellant received the order u/s 143 (3) on 01.04.2016. The appeal should have been filed on 30/4/2016. The assessee filed the appeal on 9/5/2016 with a delay of 9 days, a long with Petition for condonation of delay.*

*6.2.1 In the Petition for condonation of delay filed along with Form 35 he appellant stated only one reason for the delay -" That the delay of 9 days has been caused due to the time taken for appointing our representatives, M/s. Padmanabhan Ramani & Ramanajum. Chartered Accountants and therefore appeal could not be filed well within the stipulated time."*

*6.2.2 During the course of the appeal proceedings on 26/7/2017 the A.R of the assessee filed Affidavit requesting for condoning the delay in filing the appeal in*

*which he stated - "After a reference through a friend I requested the present auditors, Messrs. Padmanabhan Ramani & Ramanajam, Chartered Accountants to file the appeal before the Ld. Commissioner of Income tax (appeals). As they were also busy and was out of station for- the Indian bank statutory audit assignments during the month of April, the appeal papers could be drafted and filed after- a while on 9<sup>th</sup> May, 2016.*

*6.2.2 The hon"ble Supremc Court in the case of Ramlal vs. Rewa Coalfields Ltd . AIR 1962 SC 361 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.*

*6.2.3 In the present case, the first two reasons advanced for the delay*

*(1. Time taken for appointing the Chartered Accountants and 2. The Chartered Accountants were busy and out of station for the Indian bank statutory audit assignments) are nothing but negligence which could have been very well avoided by the exercise of due care and attention.*

*Respectfully following the above stated case-law, there exists no sufficient or good reason for condoning inordinate delay of 9 days. Hence the delay in filing the appeal is not condoned and this appeal is dismissed as barred by limitation.*

*6.3.1 In this context it is pertinent to refer to Rankak & Ors. Vs. Rewa Coalfields Ltd. AIR 1962 SC 361 and JCIT Vs. Tractors & Farm Equipments Ltd. (ITAT, Chennai-TM) 104 ITO 149 - Party has to show reason for delay on the last day of limitation period and thereafter for each day thereafter 6.3.2 In [2015] 54 taxmann.com 329 (Jaipur - Trib.) K.G.N.M.M.W. Educational Research & Analysis Society vs Income-tax Officer, Jhalawar, the ITAT Jaipur Bench held - Where Chartered Accountant representing a assessee-society filed appeal before Tribunal with a delay of 347 days taking a plea that he had gone for audit of a bank and in meantime his staff filed papers belonginq to*

*assessee in record, since delay was not explained on day to day basis, appeal W2.S to be dismissed being barred by limitation.*

*6.3.2 The appeal should have been filed on 30.04.2016. Hence as per the above sated case- laws, the assessee has to show reason for delay on 30.04.2016 ( the last day of limitation period) and for each day thereafter.*

*However as per the Petition for condonation of delay the assessee Did not explain the reason for the delay from 30.04.2016 to 09.05.2016.*

*As the assessee failed to show the reason for the delay on the last day of limitation period and for each day thereafter, respectfully following the above stated case-law, the delay in filing the appeal is not condoned and this appeal is dismissed as barred by limitation”.*

What I can discern from the above is that the Id. Commissioner of Income Tax (Appeals) had refused to condone the delay of nine days and dismissed the appeal of the assessee. Before the Id. Commissioner of Income Tax (Appeals) assessee had filed an affidavit seeking condonation of delay. The said affidavit which forms a part of the order of the Id. Commissioner of Income Tax (Appeals) clearly say that assessee's earlier Chartered Accountant had withdrawn and therefore they were constrained to find a new auditor to represent them resulting in the delay. I find the delay not to be so huge that it could not be condoned. When substantial justice and technical consideration are pitted against each other, former has to prevail

unless there are compelling reasons to show that the assessee was negligent or had willfully employed delaying tactics. I therefore direct the Id. Commissioner of Income Tax (Appeals) to condone the delay and admit the appeal of the assessee. Ld. Commissioner of Income Tax (Appeals) has to decide the appeal on merits. Order of the Id. Commissioner of Income Tax (Appeals) is set aside. Appeal is remitted back to the file of the Id. Commissioner of Income Tax (Appeals) for consideration afresh on merits.

**3.** In the result, appeal of the assessee is treated as allowed for statistical purpose.

Order pronounced on Friday, the 5th day of January, 2018, at Chennai.

**Sd/-**  
**(अब्राहम पी. जॉर्ज)**  
**(ABRAHAM P. GEORGE)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 5th January, 2018

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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