

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

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.2119/CHNY/2017
निर्धारण वर्ष /Assessment year : 2011-2012.

M/s. Ejaz Tanning Company, **Vs.** The Assistant of Income Tax,
New No.15, Old No.8, Non Corporate Circle 4,
VV Koil Street, Periamet, **Chennai 600 034.**
Chennai 600 003.

[**PAN AAAFE 7758D**]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. K. Ravi, Advocate
प्रत्यर्थी की ओर से /Respondent by : Mrs. S. Vijayaprabha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 26-02-2018
घोषणा की तारीख /Date of Pronouncement : 26-02-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

Assessee in this appeal filed against an order dated 10.08.2017 of the Id. Commissioner of Income Tax (Appeals)-5, Chennai, has raised nine grounds, of which, ground 2 to 6 assail non condonotion of delay by the Id. Commissioner of Income Tax (Appeals).

2. Ld. Counsel for the assessee submitted that assessee had filed an appeal before the Id. Commissioner of Income Tax (Appeals) with a delay of thirty three days. As per the Id. Authorised Representative, assessee had also filed a condonation petition before the Id. Commissioner of Income Tax (Appeals). In such petition, as per the Id. Authorised Representative, assessee had pointed out that the delay was due to the busy schedule of the consultant appointed by it and was not on account of any neglect or inaction on its part. As per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) however refused to condone the delay, citing a reason that assessee did not file any evidence in support of the contentions raised in the condonation petition. Ld. Authorised Representative submitted that he himself was the concerned Id. Authorised Representative appointed by the assessee to appear before the Id. Commissioner of Income Tax (Appeals) and due to certain personal inconvenience, he could not enter appearance. As per the Id. Authorised Representative if one more opportunity was given, assessee will be duly represented before the Id. Commissioner of Income Tax (Appeals) and file necessary records and submissions for adjudicating the appeal on merits.

3. Per contra, Id. Departmental Representative submitted that the condonation petition filed by the assessee before the Id.

Commissioner of Income Tax (Appeals) was not at all inadmissible, since no valid reason was shown in such condonation letter. According to her, despite five notices given by Id. Commissioner of Income Tax (Appeals) to the assessee, there was no appearance. Thus according to her, Id. Commissioner of Income Tax (Appeals) was justified in dismissing the appeal of the assessee.

4. We have considered the rival contentions and perused the orders of the authorities below. Condonation petition filed by the assessee before the Id. Commissioner of Income Tax (Appeals) states as under:-

"I, A.R. Ejaz Ahmed, aged 57 years, S/o. Mr. A.S. Abdul Rahim, Partner of M/s. Ejaz Tanning Co. having office at New No.1S, Old No.S, .V. Koil Street, Periamet, Chennai-600 003/ do hereby affirm and sincerely state as under:

- 1) I am well acquainted with the facts and circumstances of the case.*
- 2) I state that the order dated 26/02/2016 passed by the assessing officer giving effect to the order ujs.263 of the Commissioner of Income Tax-9, Chennai for Asst. Year 2011-12 was received by me on 29/02/2016.*
- 3) I state that the statutory time for filing of appeal before the Learned Commissioner of Income Tax (Appeals) expired on 30.03.2016.*
- 4) I state that we had engaged a consultant to help us in filing the appeal. In spite of our best efforts, we were not able to get the appeal papers from the consultant we had engaged in time to file the appeals.*

- 5) *Thereafter, we have made repeated follow up with our consultant. However, in view of our consultant's busy schedule, we were able to get the appeal papers only on 02/05/2016.*
- 6) *Consequently, there is a delay of 33 days in filing of appeals before your honours.*
- 7) *I state that the delay in filing of appeal was neither wilful nor wanton.*
- 8) *I state that we have not gained anything by the delay in filing of the appeal.*
- 9) *Under this circumstances, it is prayed that the delay in filing of any appeal for Asst. Year 2011-12 may please be condoned”.*

Ld. Commissioner of Income Tax (Appeals) did not condone the delay citing the following reasons.

‘In the petition for condonation of delay the appellant stated only one reason for the delay-‘However, in view of our consultant’s busy schedule, we were able to get the appeal papers only on 02.05.2016.

*Consequently, there is a delay of 33 days in filing of appeals before yours honours.”
However, the assessee did not furnish any evidence in support of the above stated reason for the delay”.*

No doubt it should be the endeavor of every assessee to ensure that it is properly represented before the Id. Commissioner of Income Tax (Appeals). However, considering the submission of the Id. Authorised Representative before us that the delay was due to certain unavoidable circumstances, we are of the opinion that delay ought be condoned. When technical consideration and merits are pitted against

each other, the latter has to get preference over the former. Considering the facts and circumstances of the case, we direct the Id. Commissioner of Income Tax (Appeals) to condone the delay, admit the appeal and adjudicate it on merits. Needless to say that assessee shall be given proper opportunity to explain its case. We therefore set aside the order of the Id. Commissioner of Income Tax (Appeals) and remit the appeal back to him for consideration afresh in accordance with law

5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing on Monday, the 26th February, 2018 at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 26th February, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF