

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5695/MUM/2017
Assessment Year: 2010-11**

M/s Talent Garments Private – Limited, 201, Bharat Industrial Estate, T.J. Road, Sewree, Mumbai - 400012 PAN: AABCT3742L	Vs.	The Income Tax Officer-7(3)(3), Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Ms. Namrata R. Dedhia (AR)
Revenue by : Ms. N. Hemalatha (DR)

Date of Hearing: 14/06/2018
Date of Pronouncement: 19/06/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 05.06.2017 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-14, Mumbai, for the assessment year 2010-11, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act') after rejecting the application for condonation of delay of 116 days in filing the appeal.

2. The assessee has preferred this appeal before the Tribunal on the following effective ground:-

"The learned Commissioner (Appeals) has erred in not condoning the delay of 116 days in filing the appeal against the order of the Assessing Officer due to bona fide reasons and thereby, dismissing the appeal."

3. Before us, the Ld. counsel for the assessee submitted that the assessee was prevented from filing the appeal before the Ld.CIT (A) due to the reason that when the notice u/s 148 was issued by the AO, Mr. Sandeep More, who was handling the accounts of the company had left the company and the documents required for filing before the AO could not be traced. Since the assessee could not locate the required documents, the appeal was filed along with the application for condonation for delay. The Ld. counsel further contended that the Ld.CIT (A) has wrongly rejected the contention of the assessee and declined to condone the delay in filing the appeal. The Ld. counsel submitted that the delay was neither intentional nor was due to the inaction on the part of the assessee. Therefore, the assessee may be given opportunity to pursue its appeal before the Ld. CIT (A).

4. On the other hand, the Ld. Departmental Representative (DR) opposed the contentions of the Ld. counsel and submitted that since the assessee has failed to prove the sufficient cause for condoning the delay in filing the appeal, the Ld. CIT (A) has rightly rejected the submission of the assessee and dismissed the appeal of the assessee in *limine*.

5. We have heard the rival submissions and also perused the order passed by the Ld. CIT (A). We notice that the Ld.CIT (A) has rejected the application of the assessee holding that the submission of the assessee is vague and is not corroborated by any evidence. The assessee has submitted an affidavit sworn by Sh. Devan Popatlal Haria, Director of Talent Garments Pvt. Ltd. and reiterated its plea that since Mr. Sandeep More had left the company, the documents kept by him could not be located well in time, which resulted in delay in filing the present appeal.

6. In the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353. Hon'ble Supreme Court has laid down the following principles:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

7. Keeping in view, the principles of law laid down by the Hon'ble Supreme Court, we are of the considered view that the assessee should get an opportunity to pursue its case before the Ld. CIT (A). We therefore, allow the sole ground of appeal of the assessee in the interest of justice and condone the delay in filing appeal before the Ld. CIT(A). Accordingly, we set aside the order passed by the Ld. CIT (A) and sent the appeal back

to the Ld. CIT (A) for deciding the appeal on merits after affording opportunity of being heard to the appellant/assessee.

In the result, appeal filed by the assessee for assessment year 2010-2011 is allowed for statistical purposes.

Order pronounced in the open court on 19th June, 2018.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 19/06/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai