

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, AHMEDABAD
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
MS MADHUMITA ROY, JUDICIAL MEMBER
आयकर अपील सं./ITA No.701/AHD/2012
अाधरण वष/Asstt. Year: 2004-2005

Diamond Infosystems Ltd. (Previously Enterprise Intelligent Systems Ltd) 5/12, BIDC, Gorwa, Baroda. PAN: AAACD8085B	Vs.	A.C.I.T, Circle-1(2), Baroda.
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(Applicant)		(Respondent)
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Assessee by :	Shri M.K. Patel, A.R
Revenue by :	Shri Ranjan Kumar Singh, Sr.DR

सुनवाई का तारख/Date of Hearing : 12/02/2019
घोषणा का तारख /Date of Pronouncement: 20/02/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-I, Baroda, [Ld.CIT(A) in short] vide appeal no. CAB(A)/I/419/06-07 dated 23/02/2011 arising in the matter of rectification order passed under s.154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to Assessment Year (AY) 2004-05.

2. The assessee has raised following grounds of appeals.

1. *The learned Commissioner of Income Tax(Appeals) erred in law and in facts has set aside the disallowance made out of preliminary expenses with a direction that such expenditure being in the nature of pre-commencement expenses should be capitalized and depreciation be allowed on the same.*
2. *The appellant craves leave to add to, alter, delete or modify the above ground of appeal either before or at the time of hearing of this appeal.*

3. At the outset, it was observed that there is a delay in filing the appeal by the assessee by 324 days. In this regard, the learned counsel for the assessee drew our attention on the affidavit filed by the assessee for the condonation of the delay which is placed on record. It was explained that the accountant who was looking after the matter of the appeal filing left the organization during the relevant time and therefore the matter remained unattended.

3.1 Subsequently, the fact of non-filing the income tax appeal before the Honøble ITAT was revived once a new person joined the office. Thus in this process the delay has occurred. The relevant portion of the affidavit is narrated as under:

'AFFIDAVIT FOR CONDONATION OF DELAY IN FILLING THE APPEAL AGAINST THE ORDER OF COMMISSIONER OF INCOME TAX (APPEALS)I, BARODA

BEFORE THE INCOME TAX APPELLATE TRIBUNAL, AHMEDABAD

In the matter of Diamond Infosystems Limited, 5/12, BIDC, Gorwa, Baroda for the Assessment Year 2004-05.

I, Sumit Bhatnagar, aged about 40 years, son of Shri Suresh Narayan Bhatnagar, resident of 6 Green Park, Nizampura-Vadodara do hereby solemnly affirm and declare on oath as under:

7. I, the above named deponent, am Director of the above named assessee as and hence is fully conversant of the facts deposed below:

8. That for the Asst. Year 2004-05, the above named assessee had preferred an appeal before the Commissioner (Appeals), Baroda against the order passed under section 143(3) of the Income Tax Act, 1961. The said appeal was decided by the Commissioner (Appeals) vide Order dated 23-02-2011.

9. That the said order of Commissioner (Appeals) was served upon us on 8th March, 2011 against which we had to prefer an appeal before the Hon'ble ITAT, Ahmadabad on or before 7th May, 2011.

10. That after requisite review the order was handed over to Mr.U.V. Gandhi, Accountant (Designation) working with the assessee with the instructions to co-ordinate the entire matter of filling of the appeal. However, Mr. U. V. Gandhi suddenly left the company and hence the matter was left unattended. It was only on joining of the new incumbent and during taking charge of the matter it came to notice that the time for filing of the appeal has already expired. Immediately on noticing the fact the Company took steps to prepare and file the appeal.

11. That in this way there has been a substantial delay for which an application under Section 5 of the Limitation Act has been filed along with memorandum of appeal.

12. That the delay in filing the appeal is neither intentional nor mala fide as I was severely sick. The appellant/deponent, therefore, should not be deprived from filing the appeal only because of the un-intentional lapse.

Deponent **JUNE-01-2015**

VERIFICATION

I, Sumit Bhatnagar the above named deponent do hereby verify that the contents of this Affidavit from paras 1 to 6 are true to the best of my knowledge and belief.

Dated : 23/03/2012

DIRECTOR''

In view of the above, it was pleaded that the assessee should not suffer for the mistake committed by the accountant. Accordingly, the delay should be condoned in the given facts & circumstances as the assessee was prevented

by a sufficient cause in filing the appeal in time. The learned AR for the assessee accordingly further prayed for the condonation of the delay in filing the appeal by the assessee.

4. On the other hand, the learned DR for the Revenue opposed condoning the delay in filing the appeal by the assessee.

5. Heard the rival contentions and perused the materials available on record. There are certain facts which require attention before touching the issue for the condonation of the delay. These facts are detailed as under:

1. The assessee is a limited company.
2. The qualified chartered accountants audited the books of accounts of the assessee.
3. The trading turnover of the assessee runs into the crores of rupees.
4. The aggregate capital of the company was also running into crores of rupees.
5. The assessee was an old company.

From the above, it is clear that the assessee was not a small company. As such it was having all the assistance of the right professionals. Therefore in our considered view, the reason furnished by the assessee for not filing an appeal in time does not appear to be of plausible reason.

5.1 The assessee has only filed a vague general affidavit which utterly lacks any specific contentions and fails to explain day to day delay in a reasonable manner. The assessee has not filed the affidavit of the accountant

to corroborate its contention. Therefore, it does not conform to general human conduct in such circumstances, the preponderance of probabilities and surrounding circumstances which form sine qua non in the matters of condonation of delay.

5.2 The burden is on the assessee to reasonably explain day to day delay and establish that there existed reasonable and sufficient cause in delaying the filing of an appeal for about one year. If the proper dates or occasions are not mentioned with proper facts, then the delay cannot be condoned. In this behalf, we rely on the decision of the Hon'ble Madras High Court in the case of *Madhu Dadha v. Asstt. CIT* [2009] 317 ITR 458/[2010] 186 Taxman 8.

The Hon'ble High Court has held as under:

"Held, dismissing the appeal, that it was clear that the assessee had not explained the cause of delay in filing the appeal, especially when the authorized representative who was given charge to file the appeal had died exactly one year after the last date for filing of the appeal. Even after the death of the authorized representative the assessee had taken more than six months to file the appeal. The assessee had neither given any particular or details in the affidavit as to the date on which the papers were handed over to the counsel for preparing the appeal and on what occasion the assessee enquired about the progress in preparing the appeal and filing it. The assessee had not taken a proper plea to show sufficient cause giving evidence and proof beyond reasonable doubt for the delay. There was no need to interfere with the order of the Tribunal."

5.3 After considering the facts in totality, we are of the view the assessee has adopted a negligent and dillydallying approach in filing the appeal before the tribunal in time. As such the assessee should have been vigilant about its tax matters. Therefore we are not inclined to condone the delay of 324 days in filing the appeal by the assessee. Hence we reject the appeal of the assessee

on the preliminary ground. Therefore there is no need to adjudicate the issue on merit. Thus the appeal filed by the assessee is dismissed.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Court on 20/02/2019 at Ahmedabad.

**-Sd-
(MS MADHUMITA ROY)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 20/02/2019
Manish

आदेश क० प्रतिलिपि भेजत/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. व्रभागीय प्रजाध, आयकर अपील अाधिकरण / DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपील अाधिकरण, अहमदाबाद / ITAT, Ahmedabad