

IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH, MUMBAI

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 7181/MUM/2018  
(Assessment Year: 2009-10)

Venkatesh Securities Ltd.,  
1010, Maker Chambers V,  
Nariman Point, Mumbai - 400021  
[PAN: AAACV5479K]

..... Appellant

Vs

The Income-Tax Officer 3(3)(4),  
Aayakar Bhavan, M.K. Road,  
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Shri A K Tribrewal/Saurabh Gupta  
For the Respondent/Department : Shri Vivek Perumpura

Date of conclusion of hearing : 14.09.2022  
Date of pronouncement of order : 30.11.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 29.11.2016, passed by the Ld. Commissioner of Income Tax (Appeals) 8, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had been partly allowed the appeal filed by the Appellant against the Order, dated 30.03.2013 passed by Income Tax Officer, Ward-3(3)(4), Mumbai under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appeal was accompanied by application dated 12.12.2018 seeking condonation of delay of 738 days in filing the present appeal. The relevant extract of the application read as under:

- "2. That the appeal filed by the assessee company before the Ld. Commissioner of Income Tax (Appeal)-8, CIT (A) was disposed of vide order under reference No. CIT(A)-8/IT-94/13-14 dated 29.11.2016 passed by the CIT(A) which has been received by the assessee company on dated 4.12.2016.*
- 3. That the time for filing the appeal before this Tribunal was to expire on 03.02.2017.*
- 4. That the counsel of the assessee company at the relevant time did not advise the assessee company the necessity for filing the appeal against the said appellate order before this Tribunal.*
- 5. That thereafter, due to some disputes, he did not attend the appeal proceedings and therefore the assessee company had to seek the services of another person/counsel and accordingly the appeal was filed on the advice of M/s R.S Khandelwal & Associates, Chartered Accountants.*
- 6. That thus there is a delay of 738 days in filing the appeal before this Tribunal which may kindly be condoned"*

3. The first affidavit supporting the application for condonation of delay, sworn on 18.04.2022, was filed by the Appellant. Thereafter, second affidavit sworn on 10.08.2022 was filed by the Appellant giving the following explanation or reasons:

- "2. That the appeal filed by the assessee company before the Ld. Commissioner of Income Tax (Appeals) - 8, Mumbai was disposed of vide order under reference No. CIT(A)-8/IT-94/13-14 dated 29.11.2016 passed by*

*the CIT(A) which has been received by the assessee company on dated 04.12.2016.*

3. *That the time for filing the appeal before this Tribunal was to expire on 03.02.2017.*
4. *That the aforesaid appeal was represented by Shri Kumaresh Sarkar, Advocate, and he did not advise for filing any appeal before the Hon'ble ITAT, Mumbai against the said Appellate Order dated 04.12.2016.*
5. *That, thereafter due to some dispute, the aforesaid counsel did not attend the pending proceedings of the Assessee Company and therefore the Assessee Company had to seek professional services of another counsel.*
6. *Thereafter, the Assessee Company sought professional advice of Mr. Neel Khandelwal of M/s R. S. Khandelwal & Associates, Chartered Accountants who advised to file an appeal against the aforesaid Appellate order dated 04.12.2016.*
7. *That the Assessee Company filed the appeal on 13.12.2018 before the Hon'ble Tribunal, Mumbai with an application for condonation of delay of 677 days in filing the appeal duly signed by the then Director the Assessee Company, Mr. Mahendar Khirodwala.*
8. *That the delay of 677 days in filing the appeal before the Hon'ble Tribunal was not due to any negligence or any malafide of the Assessee Company.*
9. *That the delay in filing the appeal is because of a genuine belief and that the Assessee Company had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal."*
10. The Learned Authorized Representative for the Appellant submitted that delay in filing appeal deserves to be condoned in view of the decision in the case of Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.(1987) 167 ITR

471 (SC) and N. Balakrishnan vs. M. Krishnamurthy (1998) AIR (SC) 3222. He took us through the application for condonation of delay and the affidavit to show that the delay was not deliberate and contended that the Appellant had sufficient cause for not filing the appeal within time.

11. Per contra, the Departmental Representative submitted that the Appellant has failed to disclose sufficient cause for condonation of delay of 738 days and the appeal deserves to be dismissed on the ground of delay alone.
12. We have considered the rival submission, and perused the application and the supporting affidavits. Reliance was placed on behalf of the Appellant on the judgment in the case of N. Balakrishnan vs. M. Krishnamurthy (1998) AIR (SC) 3222, wherein the Hon'ble Supreme court has held that *the words 'sufficient cause'* under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. In our view, the liberal construction to be adopted would depend upon the facts and circumstances of each case. However, such liberal approach could in no case be stretched to cover a case where no cause has been provided for condoning the delay. Thus, as per Section 253(5) of the Act, the Appellant must show that there was sufficient cause for not presenting the appeal within the specified period. At this juncture, it would be pertinent to understand the factual background leading to the filing of the present appeal.
13. The Assessment was framed on the Appellant under Section 143(3) read with Section 147 of the Act vide order dated 30.03,2013 after making a number of additions including

addition of INR 15,31,000/- in respect of the unexplained cash deposits made in the bank account of the Appellant. The appeal against the assessment order preferred by the Appellant was disposed off vide order dated 29.11.2016. Only the aforesaid addition of INR 15,31,000/- of unexplained cash deposits was confirmed by the CIT(A). It is admitted position that the order of CIT(A) was received by the Appellant on 04.12.2016. As per the application, the Appellant filed appeal after delay of 738 days which was attributable to, in effect, change of legal counsel. The earlier counsel had parted ways on account of some dispute and the Appellant took almost 22 months to appoint a new counsel. The Appellant is a company which was required to undertaking corporate and tax compliance on a regular basis. The reasons stated in the application/affidavit do not inspire confidence. Further, the reasons also appear to be contradictory. In paragraph 4 of the application it has been stated that the counsel of the Appellant, at the relevant time, did not advise the Appellant about the filing the appeal against the order of CIT(A) before the Tribunal. Whereas in paragraph 5 of the Application it has been stated that due to some disputes, the counsel did not attend the pending proceedings and therefore the Appellant had to seek services of another counsel. Be that as it may, we note that the application does not make reference to any time period within which the aforesaid events transpired. Only the date of receipt of the order of CIT(A), (i.e. 04.12.2016) and the date of filing of the appeal (i.e. 13.12.2018) have been mentioned. For constituting sufficient cause it must be establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. Event or

circumstance arising after the expiry of limitation may not constitute sufficient cause. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Tribunal in terms of Section 253(5) of the Act. If sufficient cause is not proved nothing further has to be done, the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration [Ramlal and others vs. Rewa Coalfields Ltd. [ AIR 1962 SC 361]

14. On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause to exercise discretion by the Tribunal in favour of the Appellant. In the present case, the additions were made as the Appellant was not able to prove the source of cash deposit of INR 15,31,000/- in its bank accounts. Not filing appeal during the period of limitation or a reasonable time thereafter, leads to the conclusion that the additions has been accepted by the assessee leading to closure of pending inquiry/investigation. It is apparent that the Appellant had been negligent in filing of the appeal. In the absence of any reasonable explanation for the delay of 738 days we are not inclined to exercise discretion in favour of the Appellant. Accordingly, the application seeking condonation of delay is

rejected and the appeal filed by the assessee is dismissed as being barred by limitation.

15. In result, the present appeal is dismissed.

Order pronounced on 30.11.2022.

*Sd/-*  
(Prashant Maharishi)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : .11.2022  
*Alindra, PS*

**आदेश की 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