

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA No.30/Hyd/2022		
Assessment Year: 2013-14		
Gray Lines Engineers and Contractors Private Limited, Hyderabad. PAN : AACCG5551B.	Vs.	The Income Tax Officer, Ward -2(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Darshan Jakharia, C.A.	
Revenue by:	Ms. Kavitha Rani, Sr.A.R.	
Date of hearing:	03.12.2024	
Date of pronouncement:	09.12.2024	

ORDER

PER LALIET KUMAR, J.M:

This appeal is filed by the assessee feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals) – 2, Hyderabad dated 30.01.2019, for the AY 2013-14.

2. The grounds raised by the assessee read as under :

1. *On the facts and circumstances of the case, the ex parte order of the commissioner of Income Tax Appeals is erroneous in law and facts of the case.*

2. *On the facts and circumstances of the case, the learned commissioner of Income Tax Appeals erred in law and facts of the case in disposing the appeal for non-prosecution.*

3. *On the facts and circumstances of the case, the learned commissioner of Income Tax Appeals has erred in law and facts of the case in ex-parte confirming the addition u/s 68 of the Act, contrary to the facts on record and applicable law.”*

3. The brief facts of the case are that assessee is a company filed its return of income for A.Y. 2013-14 on 27.09.2013 admitting loss of Rs.89,279/-. The case was selected for scrutiny under CASS and notice u/s 143(2) dt.03.09.2014 was issued and duly served on the assessee. In response to notices issued u/s 143(2) and 142(1) of the Act along with questionnaire, assessee has furnished partial information, and no books of accounts were produced. Hence, information was obtained by way of issuance of notices u/s 133(6) of the Act from the concerned parties. After verifying the data obtained, Assessing Officer found suspicion with respect to the transactions of the assessee company and hence, issued show cause notice on 22.03.2016 calling for production of unsecured loan creditors in person to verify the genuineness of the loans. As the assessee did not respond to the said show cause notice and as failed to establish the identity, genuineness and

creditworthiness of the transaction for an amount of Rs.87,88,358/-, finally, Assessing Officer completed the assessment u/s 143(3) of the Act on 29.03.2016 by determining the total income of Rs.86,99,079/- interalia making disallowance of Rs.87,88,35/- u/s 68 of the Act.

4. Aggrieved with such assessment order, assessee filed an appeal before the LD.CIT(A), who dismissed the appeal of assessee for non-prosecution.

5. Before us, ld.AR submitted that assessee filed this appeal with delay of 1041 days and further submitted that part of delay in filing the appeal is covid period and for the remaining delay, the assessee has drawn our attention to the affidavit filed by the assessee, which is to the following effect :

“I, T Upendar (PAN: AGYPT7632F), resident of H.NO:2-86/2/G-3, Koppula Towers, Road No. 1 BUDHANAGAR, PEERZADIGUDA VILLAGE, MEDIPAL, MANDAL, Rangareddi, Hyderabad, Telangana, India, 500098 in my capacity as Director of M/s Gray Lines Engineers and Contractors Private Limited (hereinafter referred to as Company) hereby solemnly affirm and declare as under:

Company was incorporated on 22 December 2005. However, due to various reasons beyond control, the company could not establish its business. The company could generate revenue for the first time only in FY 2017-18. As there was no revenue generating activity, the company did not have any specific personnel to look after day to day compliance activity. The accountants were shared amongst the group company. Most of the activities were looked after by the directors only. The directors are not well versed with the income tax law and hence had appointed a Chartered Accountant and were completely relying on him to do the needful. As and when notices were being received by the company, it used to forward it to the consultant. Further due to considerable lapse of time from the period to which issue pertains, to the time of the appeal proceeding and due to certain significant incidents taking place in the

interim period such as change in concerned personnel, change in office premises, the necessary documents were also not readily available. Thereafter when the order of CIT(A) was received, the company was facing various issues including non-availability of staff and risk of going under liquidation. At a later stage even the proceeding for insolvency were initiated against the company. The company did approach few consultants in this regard but the needful could not be done for multiple reasons including that the company could not afford the fees quoted by consultants, non-availability of documents due to which a couple of consultant refused to take up the matter and then due to outbreak of covid 19 in March 2020 entire activity had come to standstill for a long period and the offices remained closed and the matter skipped attention. Then towards the end of 2021 and in January 2022 when again recovery proceeding were initiated and directors received personal notices, the matter came to attention and immediately necessary action of consultation was taken and after approaching a few consultant one consultant suggested for appeal and assisted with necessary action. Under the above stated uncontrollable circumstances, a delay of 1041 days occurred in filing of the present appeal. The delay is not deliberate and occurred for the bonafide reasons as explained above”

6. On the other hand, Ld.DR submitted that the explanation given by the assessee is flimsy and no legs to stand. Ld.DR further submitted that the assessee before LD.CIT(A) also contended with regard to similar delay and our attention was drawn to para 6.1 and 6.2 of the order passed by the LD.CIT(A) and as such, the appeal of the assessee is required to be dismissed. The relevant paragraphs of the order of LD.CIT(A) read as under :

“6.1 It is relevant to mention here that during the appellate proceedings several opportunities are provided and the appellant / appellant’s A.R. failed to produce any explanation in support of appellant’s claim.

xxx(table extracted showing number of opportunities granted to assessee at pages 4 and 5 of the order of LD.CIT(A) was left for the sake of brevity)

6.2. Neither appellant nor Authorized Representative appeared on the dates posted for hearing on many occasions as mentioned above. On few occasions, adjournment requests were filed requesting some more time but the appellant did not avail adjournment opportunity given nor filed any details in support of the claim. The appellant failed to appear before

the undersigned and substantiate its grounds of appeal with evidences. However, several opportunities have been granted in the interest of natural justice. Hence, no further adjournments in this case can be granted.

6.3. *As there is no response to appeal notices, the appeal is liable to be dismissed in terms of verdicts of the Hon'ble Apex Court and the various High Courts. The Hon'ble Apex Court, in the case of CIT Vs. B.N. Bhattacharjee and another (10 CTR 354) held that an appeal means an effective appeal –*

expression "prefer an appeal" would mean effectively prosecuting an appeal"

Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it. If a party retreats before the contest begins, it is as good as not having entered the fray.

The Hon'ble MP High Court in Estate of Late Tukojirao Holkar v. CIT, 223 ITR 480(MP) has held that if a party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of paper books so as to enable hearing of the reference, the court is not bound to answer the reference. Similar view has also been taken in the case of CIT v. Multiplan (India) Pvt. Ltd., 38 ITD 320 (Del). Following the ratio of Multiplan (India) Ltd (supra), the Chennai Tribunal has also dismissed appeal for non-prosecution in the case of M/s Helios and Matheson Information Technology Ltd v ITO in ITA No.134/Mds/2011 dated 5.7.2011 for A.Y.2006-07. It is pertinent to add here that the laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well known maxim "Vigilantibus non dormientibus jura subveniunt". It means equity comes to the aid of the vigilant 1900 and not the slumbering. In all actions, suits Pot be it the and other proceedings at law and in equity, the diligence and careful plaintiff is favoured to the prejudicial of him who is careless.

6.4 *In view of the non-compliance and also in view of the fact that the statement of fact and the grounds of appeal are not substantiated by any proper statement or evidence, the appeal is dismissed accordingly."*

7. We have heard the rival submissions and perused the material available on record. The explanation given by the assessee reproduced hereinabove is contrary and does not inspire confidence. The first plea taken by the assessee was the company had no business for an extended period, which hindered

compliance activities. Second plea of the assessee was that assessee company lacked sufficient personnel. Third plea was due to changes in personnel, office premises, and a significant lapse of time, necessary documents were not readily available. The assessee further pleaded that it faced financial difficulties, including insolvency proceedings, and could not afford the fees quoted by consultants. Some consultants refused to take up the matter due to the unavailability of documents. Furthermore, the outbreak of COVID-19 in March 2020 brought all activities to a standstill, with offices remaining closed, causing the matter to be inadvertently overlooked. It was only towards the end of 2021 and early 2022, when recovery proceedings were initiated, and personal notices were issued to the directors, that the issue was revisited. Immediate steps were taken, including approaching consultants for advice, which eventually led to the filing of the appeal. The affidavit explaining the delay is evasive and vague in nature and cannot be accepted for condonation of the delay in filing the appeal. On identical set of facts, the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Ramkumar Choudhary in SLP No.48636 of 2024 dated 29.11.2024 has decided that the *whenever there is a plea for condonation of delay be it at the instance of private litigant or State, the delay is sought to be explained right from the time, the limitation starts*. In the present case, the entire delay in filing of the appeal has not been properly explained by the assessee. The relevant portion of the order in the above said case, is to the following effect :

“6. At the same time, we cannot simply brush aside the delay occurred in preferring the second appeal, due to callous and lackadaisical attitude on the part of the officials functioning in the State machinery. Though the Government adopts systematic approach in handling the legal issues and preferring the petitions/ applications/ appeals well within the time, due to the fault on the part of the officials in merely communicating the information on time, huge revenue loss will be caused to the Government exchequer. The present case is one such case, wherein, enormous delay of 1788 days occasioned in preferring the second appeal due to the lapses on the part of the officials functioning under the State, though valuable Government lands were involved. Therefore, we direct the State to streamline the machinery touching the legal issues, offering legal opinion, filing of cases before the Tribunal / Courts, etc., fix the responsibility on the officer(s) concerned, and penalize the officer(s), who is/are responsible for delay, deviation, lapses, etc., if any, to the value of the loss caused to the Government. Such direction will have to be followed by all the States scrupulously.

7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that **whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same.** For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: *Ajit Singh Thakur Singh and Another v. State of Gujarat*, AIR 1981 SC 733).

8. Accordingly, we dismiss this Special Leave Petition with costs of Rs.1,00,000/- to be deposited by the State within a period of two weeks from today with the Supreme Court Mediation Centre and file proof thereof. If the said amount, as directed, is not deposited by the State, the Registry shall take necessary steps for recovery of the same, in accordance with law.

8. Therefore, respectfully, following the decision in the case of State of Madhya Pradesh Vs. Ramkumar Choudhary (supra), the petition for condoning the delay of 1014 days caused in filing the appeal is hereby dismissed. Accordingly, the appeal of the assessee is dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 9th December, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 09.12.2024.

TYNN/sps

Copy to:

S.No	Addresses
1	Graylines Engineers and Contractors Private Limited, Plot No.53, Flat No.102, Ashwini Homes, Road No.70, Journalist Colony, Jubilee Hills, Hyderabad – 500033, Telangana.
2	The Income Tax Officer, Ward 2(2), Hyderabad.
3	Pr.CIT- 2, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order