

IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH 'D' NEW DELHI

BEFORE : SHRI H.S. SIDHU, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 3178, 3179 & 3180/Del./2014  
Asstt. Year : 1995-96, 1996-97 & 1998-99

Kuber Mutual Benefit Ltd.,  
C/o Raj Kumar & Associates,  
C/o Raj Kumar & Associates,  
Chartered Accountants,  
4435/7, Ansari Road, Darya Ganj,  
New Delhi (PAN- AAACK 4639E)  
(Appellant)

vs.

A.C.I.T., Circle 5(1),  
New Delhi.

(Respondent)

Appellant by : Shri Raj Kumar, C.A. &  
Shri Sumit Goel, CA  
Respondent by : Sh. Umesh Chand Dubey, Sr. DR  
Date of hearing : 21.03.2017  
Date of pronouncement : 28.03.2017

ORDER

Per L.P. Sahu, Accountant Member:

These three appeals have been filed by the assessee against separate orders of Id. CIT(A)-VIII, New Delhi dated 29.12.2010, 31.12.2010 and 30.12.2010 for the assessment years 1995-96, 1996-97 and 1998-99 respectively.

2. The Registry has pointed out that the present appeals have been filed with delay of 1171 days and are, therefore, defective, being barred by limitation. On this, the appellant has filed before us an application for

condonation of delay stating that the delay has wrongly been worked out by the Registry, inasmuch as the limitation in the present appeals has been reckoned from the date of service of first appellate order, i.e., 08.01.2011 till the date of filing the appeals, i.e., 23.05.2014.

3. It was submitted on behalf of the assessee that at earlier occasion, the assessee had filed the three appeals challenging the same orders of the Id. CIT(A), which were registered as Appeals Nos. 1177 to 1179/Del./2011 well within the period of limitation. These appeals were heard together and disposed of by ITAT, Bench-D, New Delhi vide consolidated order dated 30.07.2013 observing as under :

*“5. We have carefully perused the record. Admittedly in this case appeals were filed by the assessee subsequent to the liquidation order. Under such circumstances, appeals should have been filed by / through the liquidator. Similar proposition have also been followed by this Tribunal in assessee’s own case for assessment year 1999-2000 referred above.*

*6. Under such circumstances considering the facts and precedent on the issue of maintainability of the appeal when not signed by the competent person, it is held that such appeal is not maintainable. However, official liquidator in this case will have liberty to file fresh appeals if so desired.*

*7. Hence, these appeals are dismissed.”*

It was submitted that the copy of this order of Tribunal was received on 12.10.2013 and accordingly, after availing stipulated period of limitation of 60 days, the present appeals for being within the limitation could be filed upto 11.12.2013, but the same have been filed on 23.05.2014 with a delay of 163 days and not 1171 days as pointed out by the Registry.

4. Explaining the delay, it was submitted that in pursuance to the directions of Tribunal that the appeal may be filed by official liquidator (OL) of assessee company appointed by Hon'ble High Court, the appellant approached the OL of the company and wrote a letter on 22.05.2014 and emailed the same to OL with request to file the appeals under his signature, but no step was taken by him. Therefore, the present appeals were again filed by Ex. MD of the assessee company Shri P.K. Sharma since huge demands are involved in these appeals. It was further submitted that liquidation/winding up order is dated 23.04.2002 and hence, the present appeals can be filed by the person competent to file the same prior to winding up order if the assessments are made prior to such liquidation/winding up order as in the instant cases. Reliance is placed on the decision of Hon'ble Allahabad High Court in Mrs. Nargis Malik vs. Official Liquidator (copy placed at page 4 of Paper book), wherein it has been held as under :

*"The assessments were made, as already seen above, much before the Company have been wound up consequently, in my view, the provisions of section 457(1)(a) of the Act cannot be invoked in the facts of the present case."*

5. The ld. DR opposed the averments made by the ld. AR of the assessee and submitted that the present appeals are barred by limitation and delay does not stand explained. It was also submitted that the directions of Tribunal given in earlier order have not been complied with while filing these appeals again. Therefore, the present appeals are not maintainable.

6. We have considered the rival submissions and have gone through the entire material available on record. On perusal of application for condonation

of delay, we find that the assessee has raised two questions here for adjudication. First, whether in the facts and circumstances of the case, the delay occurred in the present appeal is condonable or not and second, whether ex-director is competent to file the present appeals instead of official liquidator appointed by Hon'ble High Court.

7. While dealing with the first question regarding delay in filing the appeal, we do not agree with the period of delay as calculated by the assessee. It is notable that the earlier order of the tribunal giving liberty to the official liquidator to file the appeals, was served on the assessee on 12.10.2013. The official liquidator was, accordingly, to file the present appeals within a reasonable time from 12.10.13 on which the Tribunal order was served. The assessee was not legally entitled to get benefit of limitation of further 60 days from the date of service of Tribunal order, as the stipulated period of limitation, i.e., 60 days, has to be reckoned from the service of first appellate order and not from the service of Tribunal order. Moreover, the assessee failed to satisfactorily establish as to what steps were taken to get the present appeals filed through official liquidator, as liberalized by Tribunal. The present appeals have been filed on 23.05.2014 and the letter written to OL is alleged to have been emailed on 22.05.14, i.e., a day before filing the present appeals, meaning thereby, after service of tribunal order on 12.10.2013, the assessee-company slept over their rights for over seven months till 22.05.2014, when he allegedly wrote a letter of OL of the Company, which too, a day before filing the present appeals. Thus, the appellant was not diligent enough to file these appeals after service of Tribunal order promptly or within the reasonable time, but it exhibits the lackadaisical attitude of the appellant in this regard. We, therefore, find that the delay between the date of service of

Tribunal order and date of filing the appeals, does not stand properly explained. Therefore, for want of reasonable cause on the part of appellant, we are not inclined to extend the limitation to such a huge period. Accordingly, all the appeals deserve to be dismissed as non-maintainable being barred by limitation.

8. Adverting to the second question, though it is not required to decide the same once the appeals are found non-maintainable on the point of limitation, yet we find that the said question stood decided by the Tribunal vide earlier order dated 30.07.2013 whereby the official liquidator only has been found eligible to file the present appeals. In case, there was any mistake in that order on the basis of decision relied by assessee, the assessee was required to resort to the provisions of section 254 for seeking rectification in the said order, but he failed to take proper recourse in the matter. Therefore, we do not think it appropriate to decide this question raised by assessee in the delay condonation proceedings.

9. In the result, the appeals filed by the assessee are dismissed as indicated above.

Order pronounced in the open court on 28.03.2017.

Sd/-  
(H.S. SIDHU)  
Judicial Member

Sd/-  
(L.P. SAHU)  
Accountant Member

Dated : 28.03.2017

\*aks/-