

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.5536/Mum/2013

Assessment Year: 2002-03

Vijay Fabrics Pvt. Ltd. 213, 2 nd Floor, Marina Building, Dr. Cawasji Homji Street, Marine Lines, Mumbai-400002. PAN: AAACV2774R	Vs.	ITO Ward 4(3)(2), Aayakar Bhavan, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Ishwer Prakash Rathi

Revenue by : Shri A.K.Dhondial (DR)

Date of hearing : 19.11.2015

Date of Pronouncement : 17.12.2015

ORDER

PER PAWAN SINGH, JM:

1. The present appeal is filed by the assessee against the order of CIT(A)-XIV, Mumbai dated 03.11.2006 in respect of Assessment Year (AY) 2002-03, the only dispute raised in the present appeal is regarding allowability of the claim of deduction in respect of DEPB.
2. The appeal is delayed by 2415 days. Along with the appeal, the assessee filed an application for condonation of delay which is supported with an affidavit.
3. The reason/ground for condonation of delay has mentioned in paragraph 5 and 6 of the affidavit which is as under:

“Under the aforesaid circumstances, on receipt of the order of the learned Commissioner of Income Tax (appeals) the Directors of the Company has discussed this issue and after considering the legal opinions as well as considering the assessment orders for subsequent years and read together with message conveyed under Circular No.02/2006, formed an opinion that the amended provisions of section 80HHC has been applied rightly, and as such, decided for not to file any appeal to avoid unnecessary/redundant litigations.

That the appeal was due for filing on or before 01.01.2007 i.e. 60 days from date of service of the 1st appeal's order. But as we are filing this today there is a delay of 2415 days. The delay in filing of this appeal is fully on account of the misunderstanding of the legal provisions and pendency of the writ petition”.

4. When the present appeal came up for hearing on 19.11.2005, we have heard the Authorised Representative (AR) of the parties only on the application of condonation of delay. Apart from the submission of the AR of the parties, we have perused the material available on record. The assessment order u/s 143 of the Act, the present case was passed on 18.02.2005 against which first appeal was filed before the CIT(A) on 31.03.2005 and the same was disposed of vide order dated 03.11.2006 and thus applicant/assessee was entitled to file an appeal before this Tribunal within 60 days of passing of the order or its communication, however, the present appeal is filed on 22.08.2013, the only ground is the condonation of delay in application and affidavit is that the delay in filing the appeal is on account of misunderstanding of the legal position and pendency of writ petition.
5. The AR of the assessee relied upon the judgment of co-ordinate bench of this Tribunal in ITA No. 1398/Mum/2012, ITA No. 1111/Kol/2012 and (1995), 6 SCC 614 titled as Nandishore Vs. State of Punjab and 167 ITR 471 titled as Collector of Land Acquisition vs. Katigi & Ors.
6. We have gone through the judgments placed on record by Id. AR of the assessee with the utmost regard to the judgment of Hon Apex Court and the order of coordinate bench(s) wherein the Hon'ble Court has held that in condonation of delay and for doing substantial justice a pragmatic and liberal approach must be adopt and when substantial justice and technical consideration are patted against each other the cause of substantial justice to be preferred for the other side cannot claim to have a vested right in justice being done because of none deliberate delay.
7. The Hon'ble Apex Court in a recent judgment dated 24.03.2014 SLP No. 6609-6613 titled as Brijesh Kumar vs. State of Haryana has held that

“9.In P.K. Ramachandran v. State of Kerala & Anr., AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation

much less a reasonable or 3 Page 4 satisfactory explanation for condonation of delay had been given, held as under:– “Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”

10. While considering a similar issue, this court in Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649 laid down various principles inter alia: “ x x x v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play x x x ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. x x x xvii) The increasing tendency to perceive delay as a non-serious mater and, hence, lackadaisical propensity can be exhibited in a 4 Page 5 nonchalant manner requires to be curbed, of course, within legal parameters.” (See also: Basawaraj v. Land Acquisition Officer (2013) 14 SCC 81)

11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

8. No doubt the court should not adopt an injustice oriented approach in rejecting the application for condonation of delay. While dealing with the application for condonation of delay, the court has to draw an understanding between delay and inordinate delay for want of bonafidees or an inaction or negligence would drive a part of protection of section 5 of Limitation Act.
9. Sufficient cause is a condition precedent for exercise of discretion for condonation of delay, the Apex Court has number of times and again held that when mandatory provision is not complied with and the delay is not properly, satisfactorily and conveniently explained, the court cannot condone the delay on sympathetic grounds alone.
10. We do not find any sufficient and cogent reason explained in the affidavit filed by the assessee. The applicant/assessee has not properly explained the delay, the reason mentioned in the application and the affidavit is not plausible.
11. In the result, application for condonation of delay is dismissed, hence the present appeal is filed by the assessee is also dismissed as barred by limitation.

Order pronounced in the open court on this 17th December 2015.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 17/12/2015

S.K.P.S

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार

(Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai