



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI NABIN KUMAR PRADHAN, ACCOUNTANT MEMBER**

ITA no.7106/Mum./2013  
(Assessment Year : 2008-09)

M/s. Devyang Realty Holdings P. Ltd.  
C/o Nanubhai Desai & Co., C.A.  
517, Sir Vithaldas Chambers  
16, Mumbai Samachar Marg, Fort  
Mumbai 400 001 PAN – AACCD5756B

..... Appellant

v/s

Income Tax Officer  
Ward-5(1)(3), Mumbai

..... Respondent

Assessee by : Shri Nitesh Joshi  
Revenue by : Shri B.S. Bist

Date of Hearing – 09.08.2016

Date of Order – 24.08.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal by the assessee is directed against the order dated 12<sup>th</sup> September 2013, passed by the learned Commissioner (Appeals)-9, Mumbai, for the assessment year 2008-09.

2. Assessee is basically aggrieved with the decision of the learned Commissioner (Appeals) in dismissing assessee's appeal in limine without condoning the delay. Of-course, the assessee has also raised

a separate ground challenging the merits of the addition made by the Assessing Officer.

3. Brief facts are, assessee a company is primarily engaged in the business of Real Estate Developer and builders. For the assessment year under consideration, the assessee filed its return of income on 30<sup>th</sup> September 2008, declaring loss of ₹ 10,15,119. The Assessing Officer while completing the assessment under section 143(3) of the Act, made a number of additions / disallowance as a result of which the total income was determined at ₹ 33,76,330. Being aggrieved of the assessment order so passed assessee preferred an appeal before the learned Commissioner (Appeals), However, the said appeal was filed with a delay of one year and two months. In the application seeking condonation of delay, assessee had stated that due to health issues of one of its directors the appeal could not be filed on time. A doctor's certificate was also filed as a supporting evidence. The learned Commissioner (Appeals), after considering the explanation of the assessee and perusing the supporting evidence noted, the director of the assessee company was advised rest for 75 days, therefore, there was no reason to file the appeal with a delay of more than one year. Therefore, alleging that the assessee has not shown any justifiable reason for the delay, learned Commissioner (Appeals) dismissed the

appeal of the assessee on the ground of delay without going into the merits of the addition made by the Assessing Officer.

4. Learned Authorised Representative explaining the reason for the delay in filing the appeal before the learned Commissioner (Appeals) submitted that, though, the assessee had received the assessment order on 24<sup>th</sup> December 2010 and was taking step for filing of appeal within the due date which is borne out from the fact that the assessee had paid the requisite fee on 19<sup>th</sup> January 2011, however, due to illness of one of the directors of the company, the appeal could not be filed. He submitted, after recovery from illness, the filing of the appeal before the learned Commissioner (Appeals) escaped attention of the director and only at the time of filing of appeal for the assessment year 2009-10, this fact could be noticed. Therefore, immediately appeal was filed. Learned Authorised Representative submitted, delay in filing the appeal before the learned Commissioner (Appeals) was for bonafide reason and completely unintentional. Therefore, the learned Commissioner (Appeals) should have condoned delay and decided the appeal on merit.

5. Learned Departmental Representative, however, justified the action of the learned Commissioner (Appeals) in dismissing the appeal of the assessee without condoning the delay.

6. We have considered the submissions of the parties and perused the material available on record. Undisputedly, there is a delay of one year two months in filing the appeal before the learned Commissioner (Appeals) and for that reason the learned Commissioner (Appeals) has dismissed the appeal of the assessee without deciding it on merit. However, as could be seen from the contents of the affidavit filed before the learned Commissioner (Appeals), one of the directors of the assessee company was having health issues for which he was advised bed rest for some time. It is also evident that the assessee, has paid the appeal fees of ₹ 1,000 on 19<sup>th</sup> January 2011, before the due date of filing of appeal on 23<sup>rd</sup> January 2011. This proves that the assessee, in fact, had taken steps for filing of appeal before the learned Commissioner (Appeals) within the due date, but, due to health issues of one of the directors of the assessee company the filing of appeal got delayed. The allegation of the learned Commissioner (Appeals) that the assessee could have filed the appeal with a lesser amount of delay as the director was advised rest for 75 days, in our view, cannot be the reason for not condoning the delay as the assessee's statement that filing of appeal had escaped attention of the directors is quite believable. Otherwise, there is no reason for the assessee for not filing the appeal in time even after payment of the appeal fees within the due date. There is nothing on record to show that by not filing the

appeal before the learned Commissioner (Appeals) within the due date the assessee was trying to gain any advantage. On the contrary, by not filing the appeal in time has exposed the assessee to grave risk which is proved from the dismissal of its appeal by the learned Commissioner (Appeals) on the ground of delay. Thus, on overall consideration of facts and material on record, we are of the view that the delay in filing the appeal before the learned Commissioner (Appeals) was for bonafide reason and cannot be attributed to any latches or negligence on the part of the assessee. That being the case, condoning the delay in filing the appeal before the learned Commissioner (Appeals) we restore the matter back to his file for deciding assessee's appeal on merits after providing adequate opportunity of being heard to the assessee. In view of the aforesaid decision, the grounds raised by the assessee on merit are not required to be adjudicated at this stage.

7. In the result, appeal stands allowed for statistical purposes.

Order pronounced in the open Court on 24.08.2016

**Sd/-**  
**NABIN KUMAR PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24.08.2016**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai