

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 1774/Mum/2014
(Assessment Year: 2009-10)

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| M/s. Finaventure Capital Ltd. (formerly M/s. Aasda Life Care Ltd.) Unit No. 405, Hind Rajasthan Centre D.S. Phalke Road, Dadar (E) Mumbai 400014 | Vs. | DCIT, Circle 3(1) Aayakar Bhavan, M K Road Mumbai 400020 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------|

PAN - AAACA4581B

Appellant

Respondent

Appellant by: None
Respondent by: Shri Mukundraaj M. Chate

Date of Hearing: 01.03.2016
Date of Pronouncement: 02.03.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-5, Mumbai dated 11.02.2003 passed in respect of the order of assessment passed exparte under section 143(3) r.w.s. 144 of the Income Tax Act, 1961 (in short 'the Act') vide order dated 26.11/.2011 for A.Y. 2009-10.

2. The facts of the case, briefly are as under: -

2.1 The assessee, a company engaged in the business of exhibition and sale of paintings and investment in shares, filed its return of income for A.Y. 2009-10 on 30.08.2009 declaring loss of ₹16,43,941/-. A revised return was subsequently filed on 08.10.2009 wherein the loss was declared at ₹29,39,916/- . The case was taken up for scrutiny. Due to non-compliance to attend hearings scheduled by issue of notices under section 142(1) of the Act dated 19.08.2010, 07.07.2011, 25.08.2011, 20.10.2011, 14.11.2011

and 30.11.2011 the AO issued a show cause notice dated 14.12.2011 requiring the assessee to file details called for by earlier notices and explanations for transactions reported by AIR, failing which the assessment would be completed ex-parte on the basis of material on record. The AO then proceeded to conclude the assessment, on the basis of material on record, ex-parte under section 143(3) r.w.s. 144 of the Act vide order dated 26.11.2011; wherein the assessee's income was determined at ₹90,95,490/- in view of the following additions: -

- | | | |
|------|---------------------------------------------------------------------------------------------------------------------|--------------|
| (i) | by disallowing the expenses claimed and denying loss on sale of investments, the entire receipts was brought to tax | ₹33,91,153/- |
| (ii) | Transactions reported in AIR data | ₹57,04,334/- |

2.2 On appeal also, the learned CIT(A) observing that the assessee had failed to attend the hearings scheduled for 20.11.2012, 20.12.2012, 11.01.2013 and 25.01.2013, the assessee's appeal was dismissed on merits vide the impugned order dated 11.02.2013.

3. Aggrieved by the order of the CIT(A)-5, Mumbai dated 11.02.2013, the assessee preferred an appeal before the Tribunal raising the following grounds: -

- “1. *On the given facts, circumstances and legal propositions; Hon. CIT(A) erred in confirming the assessment in absence of reasonable opportunity of making the submissions to the assessee in principles of natural justice and such assessments are in violation of principles of natural justice and liable to be annulled.*
2. *Without prejudice to Ground No. 1, on the given facts, circumstances and legal propositions; Hon. CIT (A) erred in confirming the assessment in absence of reasonable opportunity of making the submissions to the assessee in principles of natural justice and such assessments are in violation of principles of natural justice and matter may be restored to the desk of assessing officer in interest of justice by giving final opportunity to the assessee.*
3. *On given facts, circumstances, and judicial pronouncements Hon. CIT(Appeals) erred in confirming in addition made by Ld. AO of Rs. 33,91,153/- as income being gross receipts in audited profit and loss account without allowing expenses claimed in profit and loss account which is bad in law and erroneous in facts and liable to be deleted.*

4. *Without prejudice to above, on given facts, circumstances, and judicial pronouncements Hon. CIT(Appeals) erred in confirming in addition made by Ld. AO of Rs. 33,91,153/- as income being gross receipts in audited profit and loss account without allowing expenses claimed in profit and loss account which is excessive and liable to be reduced.*
5. *On given facts, circumstances, and judicial pronouncements Hon. CIT(Appeals) erred in confirming in addition made by Ld. AO of Rs. 57,04,334/- as income being transactions in Bombay Stock Exchange of sale and purchase of shares which is bad in law and erroneous in facts and liable to be deleted.*
6. *Without prejudice to above, on given facts, circumstances, and judicial pronouncements Hon. CIT (Appeals) erred in confirming in addition made by Ld. AO of Rs. 57,04,334/- as income being transactions in Bombay Stock Exchange of sale and purchase of shares which is excessive and liable to be reduced.*
7. *On given facts, circumstances, and judicial pronouncements Hon. CIT (Appeals) erred in confirming in not allowing capital Loss of Rs.12,95,975/- on sale of investments which is bad in Jaw and erroneous in facts and liable to be deleted.*
8. *Without prejudice to above, on given facts, circumstances, and judicial pronouncements Hon. CIT (Appeals) erred in confirming in not allowing capital Loss of Rs. 12,95,975/- on sale of investments which is excessive and liable to be reduced.*
9. *The appellant craves leave to add, amend, alter or delete all or any of the previously mentioned grounds of appeal.”*

4. The hearing of this appeal was fixed on at least four occasions and at all these hearings, none appeared for the assessee. Even today, i.e. 01.03.2016, when this case was called for hearing, none was present for the assessee but the learned D.R. was present for Revenue. As noted in the paras 2.1 and 2.2 of this order, it is seen that the assessee failed to represent its case before the authorities below inspite of being afforded many opportunities of hearing to represent its case. In these circumstances, we are of the view that the assessee is not serious about pursuing this appeal and therefore proceed to dispose off the same with the assistance of the learned D.R. for Revenue and the material on record. This appeal having been filed belatedly by 322 days, we proceed to first dispose off the petition for condonation of delay for deciding the admissibility of the impugned appeal for hearing.

Order on petition for condonation of delay in filing this appeal before the Tribunal for A.Y. 2009-10.

5. The impugned order of the CIT(A) for A.Y. 2009-10 was admittedly received by the assessee on 21.02.2013 and therefore this appeal ought to have been filed on or before 22.04.2013. The appeal was admittedly filed on 13.03.2014, thereby leading to a delay of 322 days in filing this appeal.

5.1 Alongwith the appeal, the assessee has filed a petition for condonation of delay of 322 days in filing this appeal before the Tribunal, accompanied by an affidavit. At para 6 of the affidavit, the reason for the delay is submitted to be as under: -

“6. However, the appeal could not be filed before the time limit as Hon. CIT(A)’s order was collected by the accountant of the company. Accountant kept the order with himself and therefore, management was not aware about the order passed by Hon. CIT(A) till date as the accountant did not inform the management.

The assessee prays that in view of the circumstances, being beyond the control of the assessee, the delay in filing the appeal be condoned and the appeal be heard on merits.”

5.2 Per contra, the learned Departmental Representative opposed the assessee's prayer for condonation of delay of 322 days in filing the appeal for A.Y. 2009-10. The learned Departmental Representative submitted that the delay of 322 days should not be condoned in a routine manner and that a distinction ought to be drawn between a case where the delay is inordinate, as it is in the case on hand i.e. of 322 days and in cases where the delay is of a few days. The learned Departmental Representative further contended that the explanation put forward by the assessee for the delay of 322 days (supra) does not amount to reasonable and sufficient cause which were beyond the assessee's control and the assessee has certainly not proved beyond doubt that it was diligent and not guilty of negligence whatsoever in the matter. The learned Departmental Representative prayed that since the inordinate delay in filing of this appeal being clearly due to the negligence on the part of the assessee, the petition for condonation of delay of 322 days in filing the appeal be rejected and the appeal be dismissed on this score, without admitting them for adjudication.

5.3 We have heard both parties and perused and carefully considered the material on record. The Hon'ble Apex Court in the case of Vedabai alias Vijayanatabai Baburao Patil V Shantaram Baburao Patil & Ors (2002) 253 ITR 798 has held that while exercising discretion, distinction should be made between a case where the delay is inordinate and a case where the delay is of a few days, which may deserve a liberal approach. The exercise of discretion, their Lordships observed, would depend on the facts of each case and no hard or fast rule can be laid down in this regard. In the aforesaid case, the application for condonation of delay in filing the appeal was 7 days. In the case of Ganga Sahai Ram Swarup V ITAT (2004) 271 ITR 512 (All) the delay was of 12 days in filing the appeal and it was held therein that a liberal view ought to be taken, as there was a delay of only a very short period. Even in the land mark decision on the issue of condonation, Collector, Land Acquisition V MST Katiji & Others (1987) 167 ITR 471 (SC), wherein the Hon'ble Apex Court laid down that courts should have a liberal and practical approach in exercising its discretionary powers of condonation of delay, the delay was of 4 days.

5.3.1 From the averments made in para 6 of the affidavit for condonation of delay we are of the opinion that not only the submissions are merely self-serving statements, the veracity of which are not established but also there is an inordinate delay of 322 days in filing the appeal. The assessee in its averments has not made out a case that there was reasonable cause which being beyond the control of the assessee, prevented him from filing the appeal in time before the Tribunal. The delay cannot be condoned merely because the assessee's case calls for sympathy or merely out of benevolence. For the exercise of discretion in condoning the delay, it must be established beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence on his part. Sufficient cause as contemplated in the limitation provisions must be a cause which is beyond the control of the party. In the case on hand, the factual matrix, in our view, clearly establishes that the delay was due to the negligence and inaction on the part of the assessee, which could have been avoided by the assessee if he had exercised due care and attention. Therefore in our opinion, in the factual

matrix of this case there exists no sufficient and reasonable cause for the inordinate delay of 322 days in filing the appeal for A.Y. 2009-10 by the assessee. In coming to this finding, we draw support from the decisions of the Hon'ble Apex Court in the case of MST Katiji (supra), Vedabai alias Vaijayanatabai Baburao Patil (supra), of the Hon'ble Allahabad High Court in the case of Ganga Sahai Ram Swaroop (supra) and of the ITAT, Chennai Bench (Third Member) in the case of JCIT V Tractors & Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai) (TM). We have considered the factual matrix of this case to reach the finding that there existed no sufficient and reasonable cause for the inordinate delay of 322 days in filing the appeal as the assessee has also not been able to establish that he was prevented by sufficient causes beyond his control from filing these appeals on time. In this view of the matter, we are of the view that, in the case on hand, the cause of substantial justice would not be served by condoning the inordinate delay of 322 days in filing these appeals for which no cogent reasons have been given. We accordingly reject this petition for condonation of delay for A.Y. 2009-10. Consequently, the assessee's appeal for A.Y. 2009-10 is not admitted for adjudication on merits and is dismissed in limine.

Order pronounced in the open court on 2nd March, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 2nd March, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 26, Mumbai*
4. *The CIT – 15 Mumbai*
5. *The DR, “F” Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.