

आयकर अपीलिय अधिकरण, “सी” खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL, MUMBAI - ‘C’ BENCH.

सर्वश्री बी.आर.मित्तल, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/Sh. B.R. Mittal, Judicial Member & Rajendra, Accountant Member

आयकर अपील सं./ITA No. 7167/Mum/2011, निर्धारण वर्ष/Assessment Year-2005-06

Prashant Projects Limited, 406-408 Hermes Atrium, Plot no.57, Sector 11, CBD Belapur, Navi Mumbai-400614		DCIT 10(3) Aaykar Bhavan Mumbai-20
PAN:AABCP2387F		

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :Sh.R.Muralidhar

प्रत्यर्थी की ओर से/Respondent by :Sh.Prabhat Jha

सुनवाई की तारीख / Date of Hearing :19-08-2013

घोषणा की तारीख / Date of Pronouncement :04-09-2013

आयकर अधिनियम, 1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

Per Rajendra,A.M.

Challenging the order dt.04-08-2011 of the CIT(A)-22,Mumbai, Assessee has filed following Grounds of Appeal:

“1.(a) The learned CIT(A) erred in not admitting the appeal on the grounds of delay when the appellant had in fact filed the appeal with the Dy.CIT 10(3) within the statutory time limit of 30 days period and duly acknowledged.

(b)The second set of appeal was filed in view of the Dy. CIT 10(3) not forwarding the said appeal to the CIT (A) in charge.

2.The learned CIT(A) erred in not adjudicating on other grounds of appeal here under.

a.On the facts and in the circumstances of the case the learned assessing officer erred in disallowing and making addition of Rs. 55,69,138/-out of Direct Expenses (Rs.39,45,687/-) and out of Administrative Expenses (Rs.16,23,451/-) which be set aside.

i.The learned assessing officer has made the addition arbitrarily, based on conjectures and surmises by estimating without bringing any details or facts on record.

ii.The learned assessing officer erred in not considering the voluminous details including bills, vouchers, payments made etc.,in support of all the expenses incurred and has erred in observing that no proper supporting details produced.

iii.The appellant prays that the addition of Rs. 55,69,138/- be set aside.

iv.Without prejudice, the addition made on estimate basis being on higher side is to be reduced.

b.On the facts and in the circumstances of the case the learned assessing officer erred in not giving deduction u/s 80G on the donation of Rs. 10,40,000/- given to Rangachary Trust which is eligible and exempt. The appellant prays

that the learned assessing officer be directed to give such deduction.

3.The appellants craves leave to add amend or alter any or all of the grounds of appeal.”

Facts of the case :

2. Assessee-company, engaged in the business of construction of storage handling Terminal of Petroleum Products, filed its return of income on 31.10.2005 declaring total income of Rs.45.49 lacs. Assessing Officer (AO) finalised the assessment order u/s.143(3) of the Act, on 31.12.2007, determining the total income at Rs.1,11,17,010/-. Assessment order was received by the assessee on 25.01.2008 and accordingly appeal was to be filed by 24.02.2008, but, appeal was filed on 09.06.2011. Thus, there was delay of more than 3 years. As per the assessee, by mistake it filed appeal in the office of the ACIT. Later on in May, 2011, when it came to know that appeal was to be filed before the FAA, an application was moved by it to the AO for transferring the appeal to the office of the FAA. After considering the submissions of the assessee, FAA dismissed the appeal filed by it.

2.1. Effective Ground of appeal is about not admitting the appeal by the FAA on the ground of delay. Assessee moved an application before him for condoning delay stating that by mistake appeal was filed before the AO, that once the assessee became aware of the mistake it moved an application for transferring the appeal to the office of the FAA. After considering the submission of the assessee he held that the application to AO had been filed after more than 3 years from the date of filing of appeal at wrong place, that assessee had not explained as to why it was not aware of the so called mistake committed till 3 years and how the same was realised after more than 3 years, that the assessee was assisted by the CAs who were aware of the procedure of filing of appeal since the assessment as well as appellate proceedings were being represented by the duly authorised CA, that huge gap of more than 3 years which had not been explained by the assessee which proved that there was no diligence on the part of the assessee, that the assessee was totally negligent, that the cause of delay explained by the appellant in filing appeal was avoidable by due care and attention, that there was no reasonable cause within the meaning of provisions of section 249(3) of the Act. He relied upon the decision of D Bench of ITAT Chennai pronounced in the case of Sri. Venkatesa Paper & Boards Ltd. (98 ITD 200) and dismissed the appeal filed by the assessee, as stated earlier.

2.1. Before us, Authorised Representative submitted that appeal was filed before the AO by mistake, that mistake came to its notice when it contacted office of the FAA, that once mistake was noticed assessee requested the AO to transfer it to the FAA, that delay in filing appeal was because of bona fide belief that appeal has been filed before the right forum, that FAA should have condoned the delay, that a liberal view should be taken. He referred to pages no.1086,1091 of the Paper Book (PB) as well as the letters written by him to the officers of the department on various occasions. He also relied upon the cases of Ram Nath Sao (3 SCC 195), Mst. Katiji (167 ITR 471), N. Balkrishnan (7 SCC 123), Sankar Rao (AIR 1987 SC 1726), Bharat Auto Center (282 ITR 366-All.), Cheminor Drugs Ltd (105 ITD 613 -Hyd) General Williams Masonic (ITAT Del). Departmental Representative (DR) submitted that FAA has held that no sufficient cause of delay was shown by the assessee, that there was negligence on part of the assessee, that assessee itself had admitted that it had filed appeal before the FAA, that delay was not explained by the assessee.

2.2.We have heard the rival submissions and perused the material before us. Before proceeding further, we would like to discuss philosophy and history of law of condonation of delay along with a few cases for better understanding of the subject. Seeds of condonation of delay can be seen in Act No. XXXII of 1860. Part XII, section CIX, of the Act mentions that appellate authority, hearing the appeal against the order of Panchayat, may allow a person to file appeal even after fifteen days (period stipulated for filing appeals as per the provisions of the said Act) for 'special reasons. Act No. XVI 1870, Act No. XII 1870 also had similar provisions. But, section 25(2) of the Act II of 1886 clearly mentioned that there should be sufficient cause for not presenting petition with in time. Discretion was given to the Presiding officer to accept the belated petition. Indian Income-tax, 1922 is more or less same as the present Act. Section 30(2) of the said Act is almost identical to section 249(3) of the Act. Both the Acts allow the assessee to file appeals after expiry of specified dates, if they can show sufficient cause for not filing appeals in time.

It is said that the law of limitation is enshrined in the maxim that *it is for the general welfare that a period be put to litigation*. Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. But, said rules are meant to see that the parties seek their remedy promptly. Condonation of delay is the discretion of the Presiding Officers of judicial forums and is governed by section 5 of the Limitation Act, 1963. Courts are of the view that the words 'sufficient cause' of the said Act, should receive a liberal construction, so as to advance substantial justice. Once a judicial forum accepts the explanation as sufficient, it is the result of positive exercise of discretion. These provisions do not envisage that such a discretion can be exercised only if the delay is within a certain limit. The length of the delay is not the matter, acceptability of the explanation is the only criterion. Following the spirit of advancing substantial justice, Act has included discretionary powers for condoning delay in filing appeals. Section 249(3) of the Act, that allows the FAA to admit belated appeals, reads as under :

“(3) The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.”

2.3.a. Now, we would like to discuss a few cases relevant for deciding the issue at hand. In the case of Office of the Chief Post Master General v. Living Media India Ltd. (348 ITR 7) appeals were filed by the Postal Department before the Hon'ble Supreme Court by way of special leave along with an applications for condoning delay of 427 days. Dismissing the appeal Hon'ble apex Court held as under :

*.....Neither the Department nor the person in-charge had filed an explanation for not applying for the certified copy within the prescribed period. The other dates mentioned in the affidavit clearly showed that there was delay at every stage and there was no explanation as to why such delay had occasioned. **The Department or the person concerned had not evinced diligence in prosecuting the matter to the court by taking appropriate steps.** (emphasis by us). The persons concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in the Supreme Court. In the absence of plausible and acceptable explanation, the delay could not be condoned mechanically **Though in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession had to be adopted to advance substantial justice** (emphasis by us)..... Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates,*

the Department had failed to give acceptable and cogent reasons sufficient to condone such a huge delay.” (emphasis by us).

2.3.b.In a recent judgment,(5th Aug.,2013)Hon’ble Supreme Court has again considered the issue of condonation of delay.In that matter the petitioner had filed a writ petition before the Delhi High Court against an order passed by the Commissioner of Customs, Kanpur.The Delhi High Court converted the writ petition into statutory appeal under the Customs Act, 1962. Department raised an objection about the territorial jurisdiction of that Court.Petitioner withdrew the appeal with liberty to approach the jurisdictional High Court.Hon’ble Delhi High Court dismissed the appeal as withdrawn with the following observations:

"It is for jurisdictional High Court to decide the prayer for waiver/exclusion. However, it does appear that the appellant in the present case had bonafidely filed the appeal in this Court and has been pressing the same, as the Tribunal is located in Delhi."

Appellant then filed appeal before the Hon’ble Allahabad High Court and applied for condonation of delay of 697 days.Dismissing the appeal Court observed as under:

"The appellant was assisted and had the services of the counsel's, who are expert in the central excise and customs cases.They first filed a writ petition, and then without converting it into appeal obtained an interim order.They kept on getting the matter adjourned and thereafter in spite of specific objection taken,citing the relevant case law, which is well known, took time to study the matter.Thereafter, they took more than one year and three months, to study the matter to withdraw the appeal.They took a chance, which apparently looking to the facts in Ketan V. Parekh's case and this case appear to be the practice of the counsels appearing in such matters at Delhi High Court and succeeded in getting interim orders.The Supreme Court has strongly deprecated such practice of forum shopping. In this case also there is no pleading that the writ petition and thereafter appeal was filed in Delhi High Court, under bonafide belief that it had jurisdiction to hear the appeal and that the appellant was pursuing the remedies in wrong court with due diligence.The appellant, thereafter, caused a further delay of 20 days in filing this appeal, which he has not explained.For the aforesaid reasons, we are of the opinion that the appellant is not entitled to the benefit of Section 14 of the Limitation Act. This appeal is barred by limitation by 697 days, which has not been sufficiently explained by the appellant."

Appellant challenged the order of the Hon’ble High Court before the Hon’ble Supreme Court. Not only Special leave petition,filed by the appellant, was dismissed by the Hon’ble Apex Court, but cost of Rs. 25,000/- was also imposed on the appellant.(2013-TIOL-36-SC-CUS)

2.3.c.In the case of Balwant Singh (Dead.) v.Jagdish Singh(8 SCC 685), issue before the Hon’ble Apex court was condonation of delay of 778 days in bringing the legal heirs of the appellant on record.In that the applicants contended that they were not aware of the pendency of the appeal earlier and that they had come to know of it only in the month of March, 2010, where after,the application was filed on April 15, 2010. Hon’ble Court noticed contradictions in the stand taken to explain the delay and concluded that the applicants had acted irresponsibly and with negligence and, thus, there was an ex facie lack of bona fide. It was held that the conduct of the legal representatives of the sole deceased evinced that they had acted with callousness.It was in that factual context, that the Hon’ble Apex court on an exhaustive survey of its earlier decisions on the issue declined to condone the delay.While emphasising that the expression ‘sufficient

cause', implies the presence of legal and adequate reasons to advance substantial justice, ***which presupposes no negligence or inaction on the part of the applicant***(emphasis by us).It was also enunciated that the word sufficient signified adequacy to answer the purpose intended.Hon'ble court further observed that the sufficient cause should be such as it would persuade the court, in the exercise of its judicial discretion,to treat the delay as an excusable one.In conclusion,Ho'ble Court reiterated that the word 'sufficient cause' should be understood and applied in a reasonable,pragmatic, practical and liberal manner and that ***the extent and degree of leniency to be shown by a court would depend on the nature of the application and facts and circumstances of the case***(emphasis by us).

2.3.d.In Indian Oil Corporation Ltd. v. Subrata Borah Chowlek 3 GLR 312,there was delay of 59 days. Explanations furnished by the applicant revealed, that not only the applicant whiled away time at various intervening stages even after the expiry of the period of limitation, it waited for the summer vacation of the Hon'ble Supreme Court of India and the Delhi High Court to be over to have the matter attended to by their counsel.

2.3.e.In the case of Ajit Singh Thakur Singh & Anr. vs. State of Gujarat the Hon'ble Supreme Court has explained as what constitutes sufficient cause.It was held that when a party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier,the sufficient cause must establish that because of some event or circumstances arising before limitation expired it was not possible to file the appeal within time.(1 SCC 495)

2.4.After considering the above referred judgments,we are of the opinion that delay can be condoned only if there is no gross negligence or deliberate inaction or lack of bona fide. Secondly,assessee should furnish acceptable and cogent reasons sufficient to condone delay. These are the pre-requisites for condoning delay.Besides the above referred basic principle of condonation delay certain other general principles on the subject, culled out from various case laws,can be summarised as under:

i).If sufficient cause for excusing delay is shown,discretion is available to the FAAs to condone the delay and admit the appeal.

ii).The expression 'sufficient cause' is not defined,but it means a cause which is beyond the control of an assessee.For invoking the aid of the section any cause which prevents a person approaching the FAA within time is considered sufficient cause.In doing so,it is the test of reasonable man in normal circumstances which has to be applied.The test whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. In other words,whether it is bona fide cause,inasmuch as nothing shall be deemed to be done bona fide or in good faith which is not done with due care and attention.What may be sufficient cause in one case may be otherwise in another.What is of essence is whether it was an act of prudent or reasonable man.[Ashutosh Bhadra v. Jatindra Mohan Seal (AIR 1954 Cal.238) and Hisaria Plastic Products v. CST AIR 1980 (All.) 185].Subsequent decision of a Court cannot constitute sufficient cause.

iii).In every case of delay,there is some lapse on the part of the assessee. If there are no mala fides and it is not put forth as part of a dilatory strategy,the FAA should consider the application

of the assessee. But when there is reasonable ground to think that the delay was occasioned otherwise than a bona fide conduct, then the FAA should lean against acceptance of the explanation.

iv) Section 249(3) of the Act is discretionary in nature and the assessee cannot seek condonation of delay under this provision as a matter of right, but has to satisfy the FAA by explaining the sufficient cause for the delay.

v) Just because there is merit in the appeal filed by the assessee, any amount of delay, however, negligently caused, cannot be condoned.

vi) Requirement of sufficient cause for delay cannot be ignored and it becomes very important and significant when the delay is inordinate and abnormal.

vii) In the matter of J.B. Advani & Co. (P.) Ltd. (72 ITR 395) Hon'ble Supreme Court had held that explanation of delay for the entire period is necessary. In other words what is expected of the appellant in such matters is to show that delay was occasioned due to some sufficient cause. The cause pleaded should not only be a probable one but it should be real and sufficiently reasonable. It would not be any sort of assertion that would amount to sufficient cause and would justify the condonation of delay. The cause pleaded must fit in the facts and circumstances of the given case and the explanation offered regarding the delay occasioned by such cause should appeal to reasons so as to get judicial approval. In short in matters of delay it is neither practicable nor desirable to explain minute-to-minute/hour-to-hour delay, but delay has to be explained.

viii) When an application for condonation of delay is made; to consider whether a sufficient cause has been made out by the assessee; the order of the FAA should disclose that he had applied his mind to the question raised before it. Due exercise of judicial discretion is a pre-condition for allowing/ refusing an application filed for condoning delay.

ix) The application for condonation of delay should contain substantially all the relevant material and as far as possible it should be supported by affidavit, showing that there is sufficient cause for condonation.

x) If the delay is not vitiated by any error of law it should be condoned.

xi) Any event, cause or circumstance arising after the expiry of the limitation period cannot constitute a sufficient cause.

xii) It is said that non-filing of appeal before the FAA, before the end of limitation period, creates a vested right in favour of the Revenue. As a result of not filing of an appeal by an assessee, Department, gets a legitimate and undisputed right over the tax-revenue accruing to it in pursuance of the order of the AO. This right cannot be disturbed in a light-hearted manner.

xiii) In the cases of belated appeals matters have to be essentially analysed in the facts of each case - no general formula can be or should be applied, so as to ensure that an otherwise genuine cause of justice is not defeated by adherence to technical precedence.

xiv).Condonation of delay,though an equitable relief,however, cannot be accorded merely on sympathy or compassion and the grounds offered have to be evaluated to test whether the party in default had been guilty of conscious and deliberate inaction, culpable negligence and inexcusable indifference to the period of limitation mandatorily prescribed by law.

3.If above general principals are analysed,it becomes clear that touchstone for condonation of delay is 'sufficiency/reasonableness of the cause'.Filing of an appeal in time is a normal judicial process,whereas filing a belated appeal is an abnormal step.It is said that extraordinary remedies need existence of extraordinary circumstances. Therefore,assessee has to prove that abnormal circumstances really and factually existed in a particular case.Now,we would like to deliberate upon the issue as whether extra ordinary circumstances existed in the case under consideration.

3.1.Now we would like to discuss the cases relied upon by the Authorised Representative (AR). Facts of the case of Ramnath Sao (Supra) were that after the death of some litigants,legal heirs were to be brought on record and there was delay in completing the formalities. It was submitted that the persons who had to be brought on record were 'rustic' and 'illiterate villagers' belonging to 'different families, different villages within the different police stations'.It was also submitted that delay was not intentional or they were not negligent or there was no allegation of inaction of any inaction on their part.Considering the above facts Hon'ble Supreme Court had condoned the delay.In the case under consideration it cannot be said that assessee was not knowing the procedure of filing of appeal was illiterate.It was represented by a professional during the assessment proceedings as well as the stay proceedings. It is a corporate entity and is assisted by qualified professionals.In our opinion facts of both the cases are totally distinguishable.

In the case of Mst. Katiji(supra) delay of 4 days was condoned by the Supreme Court because important question as regards principle of valuation was involved. It was found that there was upward revision of the order of compensation by 800 % and this revision raised an important question about valuation. Therefore, Hon'ble Apex Court delayed the condonation. It was also observed by the Hon'ble Court that appellant was a government body and that the experience showed that on account of impersonal machinery and the inherited bureaucratic hurdles delay was less difficult to understand though more difficult to approve.Thus,the facts of the case of Mst.Katiji are not relevant in deciding the issue the in matter under consideration-here no important legal issue has to be decided.

Next case relied upon by the assessee is of N.Balkrishana (supra).In that case delay was caused by misrepresentation/inaction of the Advocate.Assessee had approached the Consumer Protection Court and was awarded compensation by District Forum from the Advocate.In those circumstances Hon'ble Supreme Court held that there was sufficient cause for filing belated appeal.It was also held that the assessee was not an 'irresponsible' litigant. The Hon'ble Apex Court also found that explanation for delay was found satisfactory by the Trial Court,whereas Hon'ble High Court had reversed the finding of the Trial Court.Considering these particular circumstances,delay was condoned. We are of the opinion that there is no similarity between the case under consideration and that of N. Balkrishnan(supra).

In the case of Sankar Rao(supra),the appeal was lodged in the Court of the Additional District & Sessions Judge instead of the court of District Judge.The Appeal memo was returned for presentation of the court of District Judge and on the very same date and appeal was filed.

Clearly, there is no similarity between the case relied upon by the assessee and the case under consideration.

Next case relied upon by the assessee is of Bharat Auto Centre (supra). In that case Hon'ble Allahabad High Court had found that the delay was caused because of seeking of legal opinion and consultation with several counsels including the retired judges considering the peculiar facts of the case Hon'ble Court had arrived at the conclusion that delay was not caused because of negligence and allowed the appeal filed by the assessee.

In the case of Cheminor Drugs Ltd. (Supra) appeal was filed before the Tribunal due to wrong advice. Considering the totality of the facts and circumstances of that case Tribunal had condoned the delay. In case of General William Mesonic Polly Clinic (Supra) it was found that society was represented by non-professional in Income Tax matters and not by Income Tax experts, that instead of filing of appeal before the proper Forum assessee had moved a fresh application before the DIT (Exemptions), that later on some professional advice the society to prefer an appeal before the right Forum, considering these facts delay was condoned.

From the above discussion, it is clear that none of the case relied upon by the AR of the assessee is applicable to the facts of the case under consideration.

3.3. Here, we would also like to mention a few facts which are useful in deciding the appeal. We find that AO had informed the assessee, as early as 31.12.2007, to file an appeal before the CIT(A). While issuing notice of demand u/s. 156 of the Act, vide paragraph no.5, he specifically mentioned as under:

“ If you intend to appeal against the assessment/fine/penalty you may present an appeal under para-1 of Chapter XX of the Income Tax Act, 1961 to the CIT(A)-10 within 30 days of the receipt of this notice.....”

After that assessee applied for stay to various authorities of department. On 15.05.2008 in his letter to the Tax Recovery Officer (TRO), assessee had mentioned that it had filed an appeal with the Commissioner of Income Tax, Mumbai. He further mentioned that it strongly believed that the appeal of the Commissioner of appeal could be favourable and the tax demand would become Nil. Finally he requested the TRO to stay recovery proceedings till the appeal was heard and determined. Assessee claims itself an ISO 9001-2000 Company. With regard to stay of demand, Assessee's C.A. had appeared before the CIT(A)-10, Mumbai as evident from the order of the Commissioner dated 12.11.2008, in his order, he held that a portion of demand would be kept in abeyance till 31.01.2009 or the receipt of the order of the appeal from the CIT(A) which ever was earlier. On 22.03.2010 in its letter to ACIT-10 (3) in para-2, assessee mentioned that it had preferred an appeal to the CIT(A) against the order of DCIT-10(3) in respect of AY 2005-06. It was also mentioned that matter in appeal had not been taken for hearing even after lapse of 2 years and that it was sure about disallowance made by the AO to be set-aside in appeal. It was further mentioned that company would follow up the matter with the CIT (Appeals) for taking up the case for hearing at the earliest. Vide its letter dated 12.03.2011 to the ACIT-10-3, Mumbai, assessee informed that for earlier years matter was pending before the ITAT/FAA. We find that in its letter, dated 08.04.2011 to the TRO (10) (3), assessee-company had mentioned that it had been able to win case in the Hon'ble Supreme Court, that the departmental appeal against it was rejected for the earlier years in appeal by the ITAT, Mumbai. The letter also talks about pendency

of appeal for AY 2005-06 in the office of the FAA and guideline issued by the CBDT also refer to in the said letter. From these letters on thing becomes clear that assessee is well aware of procedural aspect and legal provisions of the Act.

3.3. We are aware that adopting a liberal view in condoning delay is one of the guiding principles in the realm of belated appeals, but liberal approach cannot be equated with a licence to file appeals at will-disregarding the time limits fixed by the statutes. No doubt that assessee is entitled to wait until the last date of the limitation for filing of the appeal, but when they allow the limitation to expire and come forward with an explanation enumerating reasonable causes for not filing the appeal within the time prescribed under the statute, then the causes, so shown, must establish that because of some event or circumstances arising before limitation expired. Except for the inaction and negligence of the assessee, there are no other reasons for filing a belated appeal. We have avoided using adjectives before the words inaction and negligence, which are generally used by the higher forums of judiciary when they find that delay is result of total lack of prudence. Timely action is the essence of day-to-day activities of human being - a farmer not sowing his fields in time after the rains has to suffer. Principles of nature are equally applicable to human behaviour, including the judicial system. No action was taken by the assessee for a long period to follow up his appeal.

So, if the FAA found that no satisfactory cause, not to speak of sufficient cause, has been shown by the assessee, then fault does lie with the assessee and not with him. Assessee, itself has to be blamed for the uncomfortable situation in which it finds now. For a period of more than three years, it did not bother to find out the outcome of the appeal it had filed and that also when recovery proceedings were being undertaken by the department. Bank account of the assessee were attached as per the documents available in the PB. It contacted AO, TRO and the CIT for staying demand, but no effort was made to find out the fate of the appeal. In our opinion behaviour of the assessee can be termed as personified inaction and negligence. Courts are of unanimous opinion that act of negligence and inaction do not constitute reasonable cause. We are also of the opinion that by not filing appeal in time before the FAA, assessee had allowed the State to believe that it had a vested right in its favour. Rights of the Sovereign are as important as that of the tax-payer. In matter of condonation of delay both have to show a sufficient cause which a prudent person can believe. In the case under consideration same is absent.

We are aware that affidavits explaining the delay is not a pre-condition for accepting belated appeals. But, affidavits throw light on the surrounding circumstances and thought process of an assessee. In the case before us, we find that no affidavit was filed before the FAA or us. We are not deciding the case against the assessee because of the said reason alone, but affidavit would have helped us to find whether or not any sufficient cause was there, if we were aware of sequences of the events and the circumstances that led to delay.

An assessee who claims that it had won the case at the level of the Hon'ble Apex Court or was successful before the ITAT, cannot be treated an ignorant assessee as the appellants of the case of Ramnath Sao (supra). Besides, the assessee was aware that the CBDT has issued instruction with regard to stay of demand. Assessee, a corporate-assessee, filing returns of income of lacs of Rupees and assisted by highly qualified professionals cannot take shadow of umbrella of ignorance of the provisions of law. It is also not the case of the assessee that it was guided by the wrong advice of the professional or it took time to consult professionals. An individual of a small place and an ISO 9001-2000-company cannot be equated, while considering the condonation of delay.

Therefore, considering the peculiar facts and circumstances of the case we uphold the order of the FAA and decide the effective ground of appeal against the assessee.

As a result, appeal filed by the Assessee stands disallowed.

परिणामतः निर्धारिती द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 4th September, 2013.
आदेश की घोषणा खुले न्यायालय में दिनांक 4 सितंबर, 2013 को की गई।

Sd/-

(बी.आर्.मित्तल.B.R.Mittal)

न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-

(राजेन्द्र/Rajendra)

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Date: 04th September, 2013
SK

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT (A) /संबद्ध अपीलीय आयकर आयुक्त,
4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR "C" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि सी खंडपीठ, आ.अ.न्याया.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai