

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

**Before Shri G. Manjunatha, Accountant Member  
and Shri Ram Lal Negi, Judicial Member**

**ITA No. 955/Mum/2016**  
(Assessment Year: 2009-10)

M/s. Astec Lifesciences Ltd. 3rd Floor, Godrej One Pirojshnagar, Vikroli (E) Mumbai 400020	Vs.	D C I T - 2(1) Room No. 561, 5th Floor Aayakar Bhavan, M.K. Road Mumbai 400020
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PAN – AAACA4832D

**Appellant**

**Respondent**

Appellant by: S/s. Jitendra Jain, Gopal Sharma  
& Akram Khan  
Respondent by: Shri Satishchandra Rajore

Date of Hearing: 27.09.2018  
Date of Pronouncement: 05.10.2018

**ORDER**

**Per G. Manjunatha, AM**

This appeal filed by the assessee is directed against the order of the CIT(A)-4, Mumbai dated 26.11.2015 and it pertains to A.Y. 2009-10.

2. The assessee has raised the following ground of appeal: -

*“(i) Ld.CIT(A) is erred to reject the petition to condone the delay on technical ground that each days delay was not explained though it was very well explained that changed decision to file the appeal was based on the reasoning given by the new consultant hired to represent our appeal before CIT(A) for A.Y.2010-11 and also substantiated in order to condone this delay both i.e. the meritorious proposition justifying admission of this belated appeal and the reasonable cause which has prevented in filing the appeal belatedly which were not disputed nor found frivolous, thus the delay was not held as deliberate or as a result of negligence and hence ought to have decided on merit as the issue was similar to the dismissed appeal of A.Y.2010-11.”*

3. The brief facts of the case are that the assessee is a limited company and being engaged in the business of agrochemical and pharmaceutical

industry filed its return of income for A.Y. 2009-10 on 30<sup>th</sup> September, 2009 declaring total income of ₹4,30,35,560/-. Subsequently the case has been reopened under Section 147 of the Income Tax Act, 1961 (hereinafter "the Act") for the reasons recorded on the basis of information received from the DGIT (Inv), Mumbai which suggests that the assessee is a beneficiary of accommodation entries provided by hawala operator, M/s. Globex International, which resulted in under assessment of income. Accordingly notice under Section 148 of the Act dated 19.02.2013 was issued and served on the assessee. In the meantime, there was a survey under Section 133A of the Act was conducted at the business premises of the assessee on 28.12.2012. During the survey, a statement on oath was recorded from the Director, Shri Laxmikant Kabra, on 19.12.2013 wherein while replying to question No. 11 stated that the transactions with Globex International is non genuine. Thereafter the AO issued notice under Section 143(2) r.w.s. 142(1) of the Act. In response to the notice, the Authorised Representative appeared from time to time and furnished the details as called for. The AO, after considering the submissions of the assessee and also taking into account the statement recorded during the course survey, held that although the assessee claims to have purchased capital goods from the party, but the facts gathered through the survey squarely indicate that the assessee has purchased raw material. The assessee was not able to produce any document to prove the claim of purchase of capital asset and mere production of journal entry is not sufficient to prove the genuineness of purchase made from the above party. Accordingly he made addition of ₹45,90,435/- to the total income of the assessee.

4. Aggrieved by the assessment, order the assessee preferred appeal before the CIT(A). The appeal filed by the assessee before the First Appellate Authority was time barred by 285 days. The assessee has filed a petition for condonation of delay in filing the appeal before the CIT(A) and argued that it has not filed the appeal in time under the bonafide belief supported by a expert advice of Chartered Accountant Shri Ronak Dharmidharika that the assessee had no merit in the case. Accordingly the

assessee has not preferred appeal. However, later on when the matter for A.Y. 2010-11 came up for hearing, another Chartered Accountant, Shri Ashwin S. Chhag, advised to file appeal before the First Appellate Authority. Accordingly the assessee has filed this appeal. The assessee further submitted that there is sufficient and reasonable cause for not presenting the appeal in time which is due to wrong advice given by a professional. Therefore, such a delay in filing the appeal cannot be attributed to deliberate attempt made by the assessee not to file the appeal in time. The assessee also relied upon various case law to support its case.

5. The CIT(A), after considering the submissions of the assessee and also by relying upon various judicial precedents including the decision of the Hon'ble Supreme Court in the case of Ajit Singh Thakur Singh vs. State of Gujarat AIR 1981 (SC) 733 & 735, held that the assessee failed to make out sufficient and reasonable cause in not filing the appeal within the time prescribed under the Act and accordingly the delay in filing of appeal of 285 days cannot be condoned. With this observation, the learned CIT(A) dismissed the appeal filed by the assessee. Aggrieved by the order of the CIT(A) assessee is in appeal before us.

6. At the time of hearing, the learned A.R. submitted that there is a delay of 2 days in filing the appeal before the Tribunal for which the assessee has filed a petition for condonation of the delay along with an affidavit as per which there was a bonafide mistake in computing the number of days. Therefore the delay of 2 days is not intentional and accordingly the same may be condoned. The learned D.R., on the other hand, opposing the condonation of delay submitted that each and every day of delay needs to be explained with sufficient cause. Since the assessee has failed to explain the reasons for not filing the appeal within time, the delay in filing the appeal cannot be condoned.

7. Having heard both the sides and considered material on record, we found that the assessee has explained the reasons for delay of 2 days in filing the appeal, which is on account of bonafide belief that the appeal can

be filed within 2 months from the date of receipt of the order. Though, the assessee has filed the appeal within 2 months from the date of receipt of the order, if you go by number of days, it goes beyond 2 days from the date prescribed under the Act. Accordingly, we are of the considered view that there is reasonable cause for not presenting the appeal within the time prescribed under the Act and hence, the delay in filing the appeal is condoned.

8. Coming back to the issue on hand. The learned A.R. for the assessee submitted that the learned CIT(A) was erred in not condoning the delay in filing the appeal under Section 246A(i)(b) of the Act, on the ground that the assessee did not have sufficient cause for not presenting the appeal within 30 days on receipt of the assessment order. The learned A.R., referring to the petition filed for condonation of delay along with affidavits of two Chartered Accountants, submitted that the assessee has explained the delay in filing the appeal with the help of affidavits filed by the Chartered Accountants as per which Shri Ronka Dharmidharika, who represented the assessee's case before the AO has advised the assessee not to prefer appeal against the order passed by the AO as the assessee does not have strong case on merits. Therefore, on the basis of the expert advice the assessee did not file the appeal. However, on a later date when the appeal for A.Y. 2010-11 came up, Shri Ashwin S. Chhag, Chartered Accountant, who attended the proceedings for A.Y. 2012-11 informed that the assessee is having a prima facie case in its favour, therefore the order of the AO may be challenged before the appellate authority. Accordingly the assessee decided to file appeal. Therefore the delay in filing of appeal of 285 days is not intentional and there is sufficient and reasonable cause for not presenting the appeal. The learned A.R. further submitted that both the professional have explained the facts in their affidavits which are self explanatory. Therefore the delay in filing the appeal cannot be attributable to negligence of the assessee. The learned A.R., referring to various decisions of courts submitted that in similar circumstances courts have held that wrong advice given by a professional constitute a sufficient and

reasonable cause for condonation of delay in filing the appeal and accordingly the delay in filing the appeal before the CIT(A) may be directed to be condoned. In this regard, he relied upon the decision of the Hon'ble Bombay High Court in the case of Vijay Vishing Meghani vs. DCIT (2017) 398 ITR 250. The assessee also relied upon the following case law: -

- i. Faisal Hameed vs. ITO (2013) 256 CTR 429 (J & K)
- ii. International Air Transport Association vs. ADIT (2016) 179 TTJ 254 (Mum-Trib)
- iii. ACIT vs. Vireet Investment (P) Ltd. (2017) 154 DTR 241 (Del) (SB).
- iv. Vinod Agarwal vs. Pr. CIT (2018) 61 ITR(T) 598 (Kol-Trib)
- v. International Society for Krishna Consciousness vs. DDIT (Exemptions) (2008) 15 DTR 633 (Bang-Trib)
- vi. N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCS 123 (SC)

9. The learned D.R., on the other hand, strongly supporting the order of the CIT(A) submitted that the CIT(A) has discussed the case in the light of various judicial precedents and held that the assessee failed to make out sufficient and reasonable ground for condonation of delay in filing the appeal and accordingly there is no merit in the arguments of the assessee that it has not filed the appeal on the advice of the Chartered Accountant. The learned D.R. further submitted that the assessee is well aware of the fact that it does not have any merit in its case as the addition made by the AO is on the basis of the admission of the Director of the company during the survey proceedings. Therefore on the basis of these facts the assessee has taken a conscious decision not to file appeal, but all of a sudden without there being any change in the material fact the assessee has filed appeal with a delay of 285 days without any sufficient or reasonable ground. Therefore the CIT(A) was right in rejecting the appeal filed by the assessee and order may be upheld.

10. We have heard both the parties, perused the material available on record and gone through the orders of the Authorities below. The learned CIT(A) has rejected the appeal filed by the assessee on the ground that there is a delay of 285 days in filing the appeal and the assessee has not

explained the delay in filing the appeal with sufficient and reasonable cause. According to the CIT(A) the events and circumstances arising after limitation cannot constitute sufficient cause. The assessee has taken a conscious decision not to file appeal on the basis of facts of its case. When there being no material change in facts, filing of appeal on different grounds with the help of affidavits cannot constitute reasonable cause or sufficient ground for condoning the delay in filing the appeal. It is not the case of the assessee that it has handed over all necessary papers to the Chartered Accountant for preparation and filing of appeal, but the professional who attended the matter has not filed the appeal and advised the assessee not to file appeal. The assessee failed to bring any material to prove its bonafide attempt made in filing the appeal. The assessee merely furnished affidavits from two Chartered Accountants and seeking condonation of delay in filing the appeal. Accordingly the learned CIT(A) rejected the appeal filed by the assessee. The relevant observation of the CIT(A) is extracted below: -

*“3.4. I have considered the original application filed alongwith the Appeal Memo in Form No.35 and above written submission and arguments of Ld. Authorised Representative, carefully. I find that there is **"no genuine reason" or "sufficient cause" or "reasonable ground"** for filing this appeal after expiry of 285 days from the day of limitation. It can be seen from the admission of the appellant as well as present Ld. Authorised Representative that there was conscious decision not to file the appeal of this A.Y.2009-10. When there is a decision for not filing the appeal, there is no valid reason to be considered by this office for condonation of delay. When there is an advice from a reputed Chartered Accountant's Firm namely, M/s. Shah & Katheria that appellant has no merit for filing appeal, and accordingly, when there is a decision of the appellant/Directors of the company, not to file appeal against the order of the Assessing Officer, later on merely on the ground that, while appearing for A.Y.2010-11 before the Appellate Authority, an advice was given by another Chartered Accountant that appeal of this year should have been filed, cannot be presumed to be any ground for diluting the law u/s.249(3) of the Income-tax Act, 1961. Under this Section, the first Appellate Authority may on good and sufficient reason for the delay shown by the appellant, admit an appeal after the expiry of the period of limitation. Therefore, the cause for delayed appeal should be **"sufficient", "correct", "genuine" and "convincing one"**. Here is the case where there is no sufficient and genuine reason for filing appeal after 285 days that too after taking decision for not filing appeal. The Hon'ble Allahabad High Court in the case of Jagannath*

*Prasad Kanhaiyalal vs. CIT [1988] 171 ITR 596 (All.), has filed such appeal is time-barred, hence delay cannot be condoned. Reference may also be had of the proposals prescribed in the case of Padmavathi vs. Kalo, AIR 1980 Kerala 173. Further, in the case of Shreemant Govindrao N. Ghorpade vs. CIT [1963] 48 ITR 34 (Bom.). It has been held that while deciding such issue Appellate Authority has to consider whether, cause shown by the appellant for delay in filing the appeal is good and sufficient or not. Here in this case, there is no good and sufficient cause for filing such time-barred appeal.*

3.5. *The claim of the appellant that subsequent to the decision of not filing the appeal against the order of the Assessing Officer, there was an advice by another Chartered Accountant for filing appeal is obviously cannot constitute "sufficient cause" for condonation of delay. In the case of Ajit Singh Thakur Singh vs. State of Gujarat AIR 1981 (SC) 733 & 735, it has been held by the Hon'ble Supreme Court that no event or circumstance arising after expiry of limitation can constitute a "sufficient cause". Further, in the case of Shree Venkatesha Paper & Boards Ltd. vs. DCIT (2006) 1998 ITD 200/Chennai (1999), such belated appeal has not been admitted as there was no good and sufficient reason for the delay in filing of the appeal. As regards diligence, true guide is that whether the appellant had acted with reasonable diligence in the prosecution of appeal.. Here is not the case like that, hence, delay cannot be condoned vide Brijinder Singh vs. Kanshi Ram AIR 1917 (PC) 156 & ASIBAI vs. Gomathi, AIR 1979 (Madras) 115, 116.*

*As regards various case laws, referred to by Ld. Authorised Representative, it is pertinent to mention that none of the case laws is applicable to the peculiar facts of the appellant. The case of Collector Land acquisition vs. Mst. Katiji (1987) 167 ITR 471 (SC) is not applicable to the facts of the case. In that case, Estate was the applicant praying for condonation of delay which was in public interest. After that decision, in the case of Municipal Corporation, Ahmedabad vs. Voltas Ltd; AIR 1995 Gujarat 29, 43 Full Bench has clarified that "sufficient cause" is a question of fact, hence, whether to condone the delay or not, depends upon the facts and circumstances of each case. Therefore, unless genuine, correct and sufficient cause is demonstrated, such time-barred appeal cannot be admitted.*

3.6 *The appellant has to show sufficient cause for not filing the appeal on the last day of limitation and must explain the delay made thereafter, day by day, till the actual date of filing of the appeal. In other words, the whole of the delay must be explained see Ramlal v. Rewa Coalfields Ltd; AIR 1962 SC 361, 364; Sitaram Ramcharan v. M.N. Nagarshana, (1960) 1 SCR 875, 889 + AIR 1960 SC 260, 265-66; J.B. Advani & Co. Pro Ltd. v. R.D. Shah, CIT (1969) 72 ITR 395 (SC); Sandhya Rani Sarkar v. Sudha Rani Debi, AIR 1978 SC 537, 542; Soorajmull Nagarmal v. Golden Fibre & Products, AIR 1969 Cal.381, 384; Bhaktipada Majhi v. SDO, AIR 1971 Cal.204]. Sufficient cause has to be shown in respect of falling within the*

*prescribed statutory period [see Baliram Prasad v. Union of India, (1997) 2 SCC 292, 294.*

*3.7. Thus, in the light of above discussion & various references of propositions of High Courts and Supreme Court, I am of the considered opinion that appellant has not explained day to day reason of delay, has not demonstrated the sufficient cause or any genuine reason for not filing appeal on time, hence, such appeal filed after expiry of 285 days cannot be admitted, therefore, appeal so filed on 06.08.2014 against the order of the Assessing Officer dated 20.11.2013, is not admitted.”*

11. Facts remain unchanged. The assessee failed to bring any evidence to prove that there is change in facts existed at the time of filing the appeal before the CIT(A) and the facts existed at the time of assessment proceedings. The assessee is well aware of the fact of its case and accordingly taken a conscious decision not to file appeal against the addition made by the AO on the basis of information received from DGIT (Inv) which suggests obtaining bogus purchase bills from hawala operators and this fact was further supported by the statement recorded from the Director of the company during the course of survey proceedings. When the assessee has taken a conscious decision not to file appeal against the order passed by the AO, there is no valid reason to be considered by the learned CIT(A) to condone the delay in filing the appeal merely on the basis of self serving documents filed by the assessee, i.e. affidavits of two professionals. No doubt, the appellate authority have inherent power to condone the delay in filing the appeal, provided the assessee who filed the appeal makes out a case of sufficient and reasonable ground for not filing the appeal within the time prescribed under the Act. The courts have held that if the assessee explains the reasons for delay in filing the appeal, then merely for the technical reasons the appeal filed by the assessee cannot be rejected. At the same time, the courts have reiterated that each and every day of delay must be explained with reasons. Therefore from the above it is very clear that it is for the assessee to explain the reasons for delay in filing the appeal with sufficient and reasonable cause. In this case, on perusal of details filed by the assessee, we found that there is no change in the facts existed at the time of assessment proceedings and at the time of



filing appeal before the CIT(A). The only change in facts is that there are divergent statements by way of affidavits from two Chartered Accountants, one in favour of the assessee and one is against the assessee. Except this the assessee has not brought out any records to prove its bonafide attempts made in filing appeal against the order passed by the AO. Had it been the case of the assessee that it has handed over all papers to the professional for filing the appeal, but the professional who had advised the assessee to not to file the appeal. In the absence of any evidence to prove bonafideness of the assessee, merely on the basis of self serving documents, huge delay in filing appeal cannot be condoned. Therefore, we are of the considered view that the assessee has failed to make out sufficient and reasonable cause for condonation of delay in filing the appeal filed before the CIT(A). Although, the assessee has relied upon various decision in support of its arguments, the facts remain that the term "sufficient cause" is not explained and hence whether to condone the delay or not is purely depends upon the facts and circumstance of each case. Therefore all the case law relied upon by the assessee are considered to be not applicable to the assessee's case and accordingly not considered.

12. In this view of the matter, we are of the considered view that the assessee has failed to make out sufficient and reasonable case before the CIT(A) for condonation of delay in filing of the appeal by 285 days. Therefore the CIT(A) was right in rejecting the appeal filed by the assessee. We do not find any error or infirmity in the order passed by the CIT(A). Hence we are inclined to upheld the findings of the CIT(A).

13. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 5<sup>th</sup> October, 2018.

Sd/-  
**(Ram Lal Negi)**  
**Judicial Member**

Sd/-  
**(G. Manjunatha)**  
**Accountant Member**

Mumbai, Dated: 5<sup>th</sup> October, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -4, Mumbai*
4. *Pr. CIT-2, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar  
ITAT, Mumbai Benches, Mumbai*

n.p.