

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE HON'BLE SHRI SHAMIM YAHA, AM
& HON'BE SH. SANDEEP GOSAIN, JM

आयकर अपील सं./ I.T.A. No. 3914/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2010-11)

Krishna Developers, Prop. Rajiv Rajaram Kashyap, 51/54, Juhu Supreme Shipping Centre, Gulmohar Cross Rd No. 9 JVPD Scheme, Andheri(W), Mumbai-400049	बनाम/ Vs.	DCIT 8(1) 210, Aayakar Bhavan, M. k. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		ACUPK9810E
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri Chaitanya Anjariya, DR

सुनवाई की तारीख / Date of Hearing	:	04/12/2018
घोषणा की तारीख / Date of Pronouncement	:	05/12/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax - 16, dated 08.01.15 for AY 2010-11.

2. At the very outset, it is noticed that none has appeared on behalf of assessee in spite of several calls and even no application for adjournment was moved. From the records, we also noticed that notice was issued to the assessee on the address given by the assessee on Form No. 36, but the report of the postal authority shows that the assessee has left from the said address. Again the notice was issued through RPAD on the last and best known address with the revenue authorities. But even in spite of that none had appeared on the date fixed. On the other hand Ld. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. At the very outset, our attention was drawn to the letter dated 30.05.15 filed by the assessee that there is a delay of 107 days in filing the appeal and for that an affidavit was also filed. From the contents of the application as well as affidavit, we notice that the assessee had put fault upon the Chartered Accountant, but no affidavit of Chartered Accountant has been placed on record.

4. We have heard Ld. DR on this ground and we have also perused the material placed on record as well as the orders passed by the revenue authorities. After analyzing the records, we are of the considered view that condonation is not a

matter of right and there has to be a reasonable cause for the same and therefore each case has to be weighed from its own facts and circumstances in which the party initially acts and behaves. As per the facts of the present case, there is a long delay of 107 days in filing this appeal before us. Although as per the provisions of Section 253(5) of Income Tax Act and appeal before the Appellate Tribunal after the expiry of statutory period from the date of order can be admitted if the assessee satisfied that the assessee has 'sufficient cause' for not presenting appeal within time.

5. We have gone through the provisions of Section-3, of the Limitation Act which reads as under:- *Bar of limitation is (i) Subject to the provisions contained in section 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defence.*

The provisions of section 3 of the Limitation Act prohibits filing of any proceeding after the expiry of limitation period. However, section 5 of the limitation Act 1963 gives power to the court to condone the delay if the applicant/appellant satisfies the court that he had "sufficient cause" have not preferring the appeal within such time.

6. We are conscious of the fact that rules of limitation are not meant to destroy the rights of parties, but at the same time they are meant to see that parties do not resort to dilatory tactics and seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury and the law of limitation fixes a lifespan for such legal remedy for the redressal of the legal injury so suffered. The law of limitation is thus founded on public policy which is enshrined in the maxim “*interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation)”.

However, in the case of **Rankak & Others Vrs. Reva Coal Ltd [AIR 1962 (SC) 361]**, the Hon’ble Apex Court have held that condonation is not a matter of right and there has to be a reasonable cause for the same. Similar observations were made by Hon’ble Madras High Court in the case of **Madhu Dadha Vrs. ACIT [317 ITR 458]**.

7. After appreciating the judgments as referred above, we are of the considered view that there is no thumb rule that the delay in all cases is to be condoned. However, “Acceptability of the explanation is the only criteria”. Sometimes the delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a long range can be condoned as the explanation thereof is satisfactory. But when there is reasonable ground to

think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation.

In the facts of the present case, the assessee has woken up from his slumber after a huge delay of 107 days and it has not been shown that all **possible steps** to file the appeal before the Tribunal were taken and the delay in filing the appeal was not because of any factors which were “**beyond the control of assessee**”.

Considering the totality of the facts and circumstances of the case, we are not at all convinced with the casual and cavalier approach of the assessee in pursuing the legal remedy of approaching the Appellate Tribunal by way of filing appeal.

Resultantly, this plea raised by the Assessee for condoning the delay in filing appeal stands **dismissed**.

8. Since we have already dismissed the appeal of the assessee on the ground of limitation, therefore there is no need to adjudicate other grounds raised by the assessee.

9. In the net result, appeal filed by the assessee stands **dismissed**.

Order pronounced in the open court on 5th Dec. 2018.

Sd/-
(Shamim Yahya)

लेखा सदस्य / Accountant Member

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 05.12.2018

SPS/Dhananjay

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai