

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ए.मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

**श्री जी.एस. पन्नू, लेखा सदस्य एवं
श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष**

**Before, Shri G.S. Pannu, Accountant Member and
Shri Joginder Singh, Judicial Member**

**ITA NO.3786/Mum/2012
Assessment Year: 2002-03**

M/s Lahoti Overseas Ltd. 307, Arun Chambers, Tardeo Road, Mumbai-400034	बनाम/ Vs.	DCIT-4(2), Room No.571, 5 th Floor, Aaykar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No.AAACL2578H		

निर्धारिती की ओर से / Assessee by	Shri M.G. Moryani
राजस्व की ओर से / Revenue by	Shri Yogesh Kamat

सुनवाई की तारीख / Date of Hearing :	11/02/2016
आदेश की तारीख / Date of Order:	18/03/2016

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 28/02/2006 of the ld. First Appellate Authority, Mumbai, on the grounds stated in the grounds of appeal. The assessee has also filed an application for condonation of delay of 2191 days in filing the appeal before this Tribunal, supported by an affidavit duly sworn by the Managing Director of the assessee company stating the reasons of delay. As per para 9 of the affidavit, it has been sworn that the concerned employee, who was handling with the taxation matter left the assessee company and due to inadvertent mistake, the papers and documents, related to the appeal remained to be handed over, which caused the delay. It has been further sworn that prima-facie the assessee is having a good case and equity of justice demand that the delay may be condoned. It has been further mentioned that if the delay is not condoned, it will greatly prejudice and harm the assessee. Reliance was placed upon the decision of the Tribunal in Sterlite Industries India Ltd. vs Addl. CIT (2006) 6 SOT 497 (Mum.) to the effect that for condoning the delay, a liberal construction, so as to advance substantial justice, should be preferred.

2. During hearing, the ld. counsel for the assessee, Shri M.G. Moryani, advanced arguments which is identical to the application/affidavit filed for condoning the delay. On

the other hand, the ld. DR, Shri Yogesh Kamat, contended that huge delay is involved, therefore, may not be condoned.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee, a public limited company, declared income of Rs.1,51,32,160/-, which was processed u/s 143(1)(a) of the Act and was accepted as such. The case of the assessee, later on, was selected for scrutiny, therefore, required notices were served upon the assessee. The assessee claimed deduction of Rs.2,79,93,183/- u/s 80HHC of the Act. While calculating the deduction u/s 80HHC, the assessee included 90% of the DEPB as part of export incentive by claiming that the DEPB amount is covered as export incentive under clause (iiia) and (iiic) of section 28 of the Act. However, the ld. Assessing Officer was of the view that the DEPB is assessable as income u/s 28(iv) of the Act, consequently, he did not allow the claimed deduction u/s 80HHC of the Act in respect of DEPB. It is noted that before the ld. Commissioner of Income Tax (Appeals) as well as during assessment proceedings, the stand of the assessee was that identical issue of sale of DEPB, for assessment year 2001-02, was decided in favour of the assessee. It was also contended that for earlier and later assessment years, in view of the decision from Hon'ble Apex Court in *Topman Exports vs CIT* (2012) 342 ITR 49(SC), the matter was restored to the file of the Assessing Officer, therefore, if the delay is condoned, it has to be remanded back to the file of

the Assessing Officer. This factual matrix was not controverted by the ld. DR.

2.2. On the issue of estimating 5% of the dividend income as proportionate expenditure for earning tax free income invoking the provisions of section 14A of the Act, is concerned, it was contended that assessment year involved is 2002-03, the estimation of expenses is highly excessive.

2.3. The moot question to be adjudicated is with respect to condonation of delay. Broadly, we are of the view, that the Courts and the quasi-judicial bodies are empowered to condone the delay, if a litigant satisfies the Courts that there was sufficient reason for availing the remedy after the expiry of limitation. Such reasoning should be to the satisfaction of the Court. The expression "sufficient cause or reasons" as provided in sub-section (5) of section 253 of the Act is used in identical position in the Limitation Act 1963, and in CPC. Such expression has also been used in other sections of the Income Tax Act such as section 273, 274, etc. Keeping in mind, the authoritative pronouncement from Hon'ble Apex Court, it is admitted position that the words "sufficient cause" appearing in sub-section (5) of section 253 of the Act should receive a liberal construction so as to advance substantial justice. It must be remembered that in every case of delay, there can be some lapses on the part of the litigant concern. That alone is not enough to turn down the plea and to shut the doors against him, unless

and until, it makes a mala-fide or a dilatory statutory, the court must show utmost consideration to such litigant. Further the length of delay is immaterial, it is the acceptability of the explanation and that is the only criteria for condoning the delay.

2.4. In such a situation, no doubt filing of an appeal is a right granted under the statute to the assessee and is not an automatic privilege, therefore, the assessee is expected to be vigilant in adhering to the manner and mode in which the appeals are to be filed in terms of the relevant provisions of the Act. Nevertheless, a liberal approach has to be adopted by the appellate authorities, where delay has occurred for “bona fide reasons” on the part of the assessee or the Revenue in filing the appeals. In matters concerning the filing of appeals, in exercise of the statutory right, a refusal to condoned the delay can result in a meritorious matter being thrown out at the threshold, which may lead to miscarriage of justice. The judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

2.5. The Hon’ble Apex Court in a celebrated decision in Collector, Land Acquisition vs Mst. Katiji & Ors. 167 ITR 471 opined that when technical consideration and substantial justice are pitted against each other, the courts are expected to further the cause of substantial justice. This

is for the reason that an opposing party, in a dispute, cannot have a vested right in injustice being done because of a non-deliberate delay. Therefore, it follows that while considering matters relating to the condonation of delay, judicious and liberal approach is to be adopted. If “sufficient cause” is found to exist, which is bona-fide one, and not due to negligence of the assessee, the delay needs to be condoned in such cases. The expression ‘sufficient cause’ is adequately elastic to enable the courts to apply law in a meaningful manner, which sub-serves the end of justice- that being the life purpose of the existence of the institution of the courts. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. This means that there should be no mala-fide or dilatory tactics. Sufficient cause should receive liberal construction to advance substantial justice. The Hon’ble Apex Court in Collector, Land Acquisition vs Mst. Katiji & Ors. (167 ITR 471) observed as under:-

“3. The legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.”

2.6. Furthermore, the Hon'ble Supreme Court in the case of Vedabai Alia Vaijayanatabai Baburao Patil vs. Shantaram Baburao Patil 253 ITR 798 held that the court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance. The court held that the expression "sufficient cause" should receive liberal construction.

2.7. In another decision in N. Balakrishnan vs M. Krishnamuthy (1998) 7 SSC 123, the Hon'ble Apex Court observed as under:-

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala

Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. 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. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

2.8. In another case, the Hon'ble Madhya Pradesh High court in Mahaveer Prasad Jain vs CIT (1988) 172 ITR 331 (MP) held that applicant cannot be made to suffer for the negligence of his counsel by following the decision from Hon'ble Apex Court in Rafiq vs Munsilal (AIR 1981 (SC) 1400). Identically, in Y.P. Trivedi vs JCIT (2014) 059 (II) ITC 0450, it was held that the assessee should not suffer and a bona-fide mistake has to be condoned.

2.9. Likewise, Hon'ble Bombay High Court in Artis Tree Pvt. Ld. vs CBDT & Ors. (2015) 273 CTR 0014(Bom.); (2014) 369 ITR 691(Bom.), it was held that if the acceptable explanation is offered and a case of genuine hardship, delay has to be condoned.

2.10. Considering the aforesaid observation from Hon'ble Apex Court, Hon'ble various High Courts and the material facts available on record, more specifically, the

reasons of delay, as the employee, who was earlier handling the tax matters of the assessee company, while leaving the job of the assessee company, did not handover the relevant papers either to the assessee or to the next person, which caused delay, cannot be overlooked, therefore, considering the totality of facts, supported by an affidavit, and the factual matrix, by taking a lenient view, the delay is condoned.

The assessee is also directed to remain vigilant in future. Before we part with, it is made clear that the delay in the present appeal has been condoned to the peculiar facts of the case, therefore, may not be quoted as precedent.

2.11. So far as, the contention of the assessee that for A.Y. 2001-02, the issue was decided in favour of the assessee and for earlier and later assessment years, the matter was remanded back to the file of the Assessing Officer, therefore, without commenting upon the merits of the appeal and the fact that for earlier and later assessment years, the issue was remanded back to the file of the Assessing Officer, we are also doing so, because, the interest of both sides and adhering to the principle of consistency, we remand the appeal of the assessee to the file of the ld. Assessing Officer to examine the case of the assessee and decide afresh in accordance with law. The assessee be given opportunity of being heard with further liberty to furnish

evidence, if any, in support of its claim, thus, the appeal of the assessee is allowed for statistical purposes only.

Finally, delay is condoned and the appeal of the assessee is allowed for statistical purposes only.

This Order was pronounced in the open court in the presence of ld. representative from both sides at the conclusion of hearing on 11/02/2016.

Sd/-

Sd/-

(G.S. Pannu)

(Joginder Singh)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/03/2016

Shekhar, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai