

**IN THE INCOME TAX APPELLATE TRIBUNAL  
THIRD MEMBER CASE, : AMRITSAR**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER  
(THIRD MEMBER)**

ITA No.169/Asr/2015
Assessment year : 2006-07

M/s Bhagwati Colonizers Pvt. Ltd., Sunni Gali, Gaushala Road, Mansa.  PAN – AACCB 4831F	Vs.	The Income-tax Officer, Ward-1(4), Mansa.
APPELLANT		RESPONDENT

Appellant by	:	Shri P.N Arora (Adv.)
Respondent by	:	Shri Sandeep Chauhan, CIT (DR)

Date of hearing	:	29.08.2019
Date of Order	:	22.10.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

On account of difference of opinion between Hon'ble Judicial Member and the Hon'ble Accountant Member, the Hon'ble President was pleased to nominate me as Third Member in the instant case with a direction to resolve the issue.

2. The difference of opinion has arisen in the matter relating to condoning the delay in filing of appeal by the assessee before the Tribunal. The appeal filed by the assessee was barred by limitation by 571 days. The averments made in the affidavit filed by the

director named Shri Amba Parshad of the assessee company explaining the reasons for delay are extracted below:-

*"I take oath and solemnly depose as follows: -*

1. *That in this case the appeal was filed on 31.3.2015.*
2. *That there was delay in filing the appeal before the Learned ITAT, Amritsar bench, Amritsar on account of the following reasons:-*
  - (i) *That the order of worthy CIT(A) dated 14/6/2013 was not received by me or any authorized person of the Company.*
  - (ii) *That we never knew the fact that the order has been passed by the Learned CIT(A) on 14/6/2013. It was only in the penalty proceedings it came to know that the appeal of the assessee was decided and on receipt of the information the appellant made a request before the Ld CIT(A) on 05/03/2014 for supply of the copy of order of Ld CIT(A).*
  - (iii) *That the copy of the order of worthy CIT(A) was received on 04/03/2015 along-with a letter stating that the copy of the order was received by the counsel who appeared before the Ld CIT(A) but the counsel never informed us about the disposal of the appeal as well as about the order of the worthy CIT(A).*
  - (iv) *That the delay took place in filing the appeal before the Learned Bench and was reasonable*

*and sufficient cause for filing the belated appeal. As there such, it is prayed that the delay may kindly be condoned under these circumstances.”*

3. Before Ld CIT(A), the assessee was represented by an Advocate named Shri J.K. Gupta. During the course of hearing, the Ld Departmental Representative furnished a copy of prescribed Form No.35 filed by the assessee before Ld CIT(A), wherein the address of Shri J.K. Gupta was mentioned as the address to which the notice/order to be served. As per the records of Ld CIT(A), the order was served on Shri J.K.Gupta on 08/07/2013 itself and a copy of acknowledgement of such service was also placed on record.

4. According to the assessee, the Counsel Shri J.K. Gupta did not intimate or forward copy of appellate order passed by Ld CIT(A). It came to know of order passed by Ld CIT(A) only when the penalty proceedings were commenced by the AO and accordingly it filed an application with the office of Ld CIT(A) on 05-03-2014 seeking a copy of the appellate order passed by Ld CIT(A). The copy of the order was supplied by the office of Ld CIT(A) on 04-03-2015 (after expiry of about one year from the date of application filed by the assessee). Immediately after the receipt of copy of the appellate order on 04-03-2015, the assessee filed appeal before the Tribunal on 31.03.2015.

5. With regard to the petition filed by the assessee praying for condonation of delay, the Learned Accountant Member took the view that the assessee has failed to show that it was prevented by

sufficient cause in filing the appeal belatedly. Accordingly the Ld Accountant member held that the delay cannot be condoned and the appeal of the assessee is not liable to be admitted. The Learned Judicial Member, however, took the view that the explanations given by the assessee along with relevant documents clearly demonstrated the bonafide and sufficient cause for non-filing of appeal within the time limit. Accordingly Learned Judicial member took the view that the delay should be condoned.

6. There was difference of opinion between the members with regard to the matter of framing questions relating to point of difference also. With regard to the point of difference, the Ld. Accountant Member has framed the following questions:-

*1.(a) Whether sufficient cause, which is a question of fact, to be considered taking the totality of the events that have taken place in particular case as explained by the Hon'ble jurisdictional High Court in Harish Kumar Chhabra vs. CIT (in ITA No.38/2012, {O&M} dated 28.08.2012), be said to have been shown by the assessee-appellant in the instant case or not?*

*b) Whether the assessee can, in the facts and circumstances of the case, be said to have satisfied the Court that it was prevented by sufficient cause from preferring, the appeal under reference within the prescribed time, which is the only criteria laid down by the clear enunciation of sections 3 & 5 of the Limitation Act 1963?*

*2. Whether the assessee's conduct, vital in condoning the delay, be regarded as bona fide or not in the given facts and circumstances of the case?*

*3. Whether the decision on merits, requiring delving into the facts of the case, should influence the decision of the Court in deciding the matter of limitation in-as-much as jurisdiction to adjudicate on merits could only follow the admission of the appeal, with it being otherwise trite law that the Courts have no power to extend the limitation, where otherwise not liable to be condoned; the decision on merits being rendered only in view of the difference between the members constituting the Bench? “*

7. The Ld Judicial Member did not agree with the questions framed by Ld Accountant Member and accordingly the Ld Judicial Member has framed following questions:-

*“(i) Whether communication of the order appealed which is requires to be communicated to the assessee, as reflects from the provisions of Sec 253(3) of the IT Act, 1961 has been communicated in the instant case to the assessee or not, or can it be dispensed with.*

*(ii) Whether once the Revenue Department failed to establish on record the service of the order appealed direct or otherwise to the Assessee as held in the instant case, then the delay if any in filing the appeal is condonable or not.*

*(iii) Whether in the instant case, the sufficient and bonafide cause has been shown by the assessee and delay has been properly explained by the assessee for not filing the appeal within the prescribed period of limitation.”*

8. In view of the difference of opinion between the members in framing questions on the point of difference also, I am constrained to frame the question on the point of difference to bring out the controversy appropriately and to render decision on those

question(s). Upon considering the facts of the case, issue before me and the questions proposed by both the members, I am of the view that the following question may be taken up to bring out difference of opinion expressed by the Members:-

*“Whether, in the facts and circumstances of the case, the explanations furnished by the assessee for not filing the appeal within the prescribed period of limitation would constitute sufficient cause or not and accordingly whether the delay in filing the appeal should be condoned or not?”*

9. The Ld A.R reiterated the submissions made in the petition filed by the assessee requesting the bench to condone the delay. He submitted that the assessee has shown sufficient cause for the delay and further the delay is not intentional. He placed his reliance on the following case laws and submitted that, in the interest of natural justice, the delay should be condoned.

- (a) Collector, Land Acquisition vs. Mst. Katiji&ors (167 ITR 471)(SC)
- (b) CIT vs. West Bengal Infrastructure Development finance Corp. Ltd ((2011)(334 ITR 269)(SC)
- (c) Bhivchandra Shankar More vs. BaluGangaram More (Civil Appeal No.4669 of 2019)(SC)
- (d) Elnet Technologies Ltd vs. DCIT (99 taxmann.com 219)(Mad)
- (e) Sivalogam Steels (P) Ltd vs. CESTAT (70 taxmann.com 301)(Mad)
- (f) E-Governance Society vs. CIT (Exemption)(261 taxman 289)(HP)

(g) M/s Lahoti Overseas Ltd vs. DCIT (ITA No.3786/Mum/2012)

The Ld A.R submitted that the appellate order passed by Ld CIT(A) was served upon the earlier Counsel and he has failed to communicate/forward the same to the assessee. Hence the assessee was not aware of the fact of passing of order by Ld CIT(A). The assessee came to know about the appellate order only when the assessing officer started penalty proceedings. Immediately the assessee applied for a copy of the order, but the same was supplied after one year from the date of application. Immediately after the receipt of the order, the assessee has preferred the present appeal. He submitted that the assessee should not be found fault with the delay, since the non-communication of the order by the earlier counsel and the delay in furnishing the copy of order by Ld CIT(A) are beyond the control of the assessee. Accordingly he submitted that there was sufficient cause for the assessee in preferring the appeal belatedly. He further submitted that, if the time of limitation is computed from the date of service of order to the earlier counsel, the same would result in delay. However, if the time limit is computed from the date of supply of the order to the assessee, the same is within the time limit.

10. The Ld D.R, on the contrary, submitted that the assessee has given the address of the earlier counsel in Form No.35 as the address to which the notice/order to be served. The Ld D.R also furnished a copy of Form No.35 filed before Ld CIT(A). Accordingly, he submitted that the Ld CIT(A) has duly served the appellate order to the address of the Counsel, who has been duly authorized by the

assessee. He submitted that it is the duty of the assessee to follow-up the matter with his counsel. He submitted that the assessee has appointed the counsel and is also aware about the details of hearing attended by the Counsel before Ld CIT(A). Hence, as a prudent businessman, the assessee should have enquired about the results of the appeal. However, the assessee has remained silent, lethargic and has simply put the blame on the earlier counsel, which is also not supported by any material. Accordingly the Ld D.R submitted that there was no sufficient cause for the delay and hence the delay should not be condoned.

11. In the rejoinder, the Ld A.R submitted that, since there was lapse on the part of the earlier counsel in the form of non-communication order and in view of the strained relationship, there was no co-operation from the earlier counsel and hence the assessee could not get a confirmation letter him. Hence the assessee was constrained to change the counsel. Accordingly he submitted that the bonafides of the submissions made in the affidavit should not be doubted with.

12. I heard the parties on this issue. Before proceeding further, I prefer to extract below some of observations made/principles laid in the matter of condonation of delay by Hon'ble Courts. In the decision rendered by Hon'ble Supreme Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & others (Civil Appeal Nos.8183 – 8184 of 2013), the Hon'ble Supreme Court has referred to some of the decisions rendered by Hon'ble Courts on the principles to be followed while

adjudicating the issue of condonation of delay. For the sake of convenience, I extract below some of them:-

*“(a) In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others (supra), a two-Judge Bench observed that the legislature has conferred power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 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, for that is the life-purpose for the existence of the institution of courts. The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice. In the said case the Division Bench observed*

*that the State which represents the collective cause of the community does not deserve a litigant-non grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression “sufficient cause”.*

*(b) In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore (1988)(2 SCC 142), Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:*

*“The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.(1962)(2 SCR 762); Shakuntala Devi Jain v. Kuntal Kumari(1969)(1 SCR 1006); Concord of India Insurance Co. Ltd. V. Nirmala Devi(1979)(3 SCR 694); Lala Mata Din v. A. Narayanan(1970)(2 SCR 90); Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression ‘sufficient cause’ in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the*

*interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”....*

*(c) In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another (2010)(5 SCC 459), where a two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.*

*(d) In Improvement Trust, Ludhiana v. Ujagar Singh and others(2010)(6 SCC 786), it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if*

*sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.”*

13. The principles that emanate from the above said decisions are that, in the matter of condonation of delay in filing appeals beyond the limitation period, the courts are empowered to condone the delay, provided the litigant is able to demonstrate that there was “sufficient cause” in preferring appeal beyond the limitation period. The Courts have also held that the expression “sufficient cause” should receive liberal construction so as to advance substantial justice. Hence the question of condonation of delay is a factual matter and the result would depend upon the facts of the case and the cause shown by the assessee for the delay. It has also been opined that generally delays in preferring appeals are required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

14. Now I shall turn to the facts of the present case. In the affidavit, the main reason cited by the assessee for the delay is that the copy of appellate order was received by the counsel who appeared before the Ld CIT(A), but the counsel never informed the assessee about the disposal of the appeal by Ld CIT(A). It is a fact that the office of Ld CIT(A) served the appellate order to the counsel of the assessee, as the address of the counsel was given in Form No.35 as the address to which notice/order to be served. Once the

order was served, it is the duty of the Counsel to inform the assessee about the order received by him. According to the assessee, the Counsel did not inform or forward the copy of appellate order to it.

15. Since the assessee has put blame on the Counsel, it was specifically asked by the bench as to whether the assessee could get a letter from the Counsel in support of the averments made in the affidavit. The Ld A.R submitted that it may not be possible to get a letter from the counsel due to strained relationship between the assessee and counsel, since there was lapse on the part of the counsel.

16. An assessee usually engages a counsel to advise him and also to deal with legal matters and hence, in the normal circumstances, an assessee fully places his reliance on the counsel, due to domain expertise possessed by the Counsel. In that situation, generally the assessee should not be put in trouble for the mistake, if any, committed by a counsel. The following observations made Hon'ble Supreme Court in the case reported in AIR 1971 Ker. 211 @ 215 supports the above said view:-

“The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bonafide or was merely a device to cover an ulterior purpose such as laches on the part

of the litigant or an attempt to save limitation in an underhand way.....”

Though the above said observations were made in the context of the wrong advice given by the Counsel, I am of the view that the above said proposition can also be conveniently extended to the lapse of the counsel in not communicating the appellate to the assessee on right time. When an assessee authorizes a counsel to appear on his behalf, such authorization is given by placing faith on the legal expertise of the Counsel and also with the hope that the counsel shall take care of the interest of the assessee. Hence, when there is a lapse on the part of the legal counsel, in my view, the assessee should not be found fault with, unless it is shown that the blame put on the counsel with malafide intentions in order to cover up the mistake/lapse on the part of the assessee. In the instant case, it is the contention of the Ld D.R that the explanation of the assessee is not supported by any evidence. In my view, the submission of the Ld A.R that the assessee could not collect a letter from the Counsel in view of the strained relationship, is a reasonable explanation when we take into account human conduct and probabilities, since a professional counsel cannot be expected to admit his lapses, lest it should affect his reputation. In any case, no material was brought on record by the revenue to show that the assessee was continuing to avail the services of very same counsel even after noticing his lapse. Hence, I am of the view that the reason given by the affidavit cannot be considered to be a malafide one. It is well settled proposition that the mistake on the part of the counsel constitutes sufficient cause in the matter relating to condonation of delay.

17. The assessee has also submitted that it had applied for a copy of order by filing application with the office of Ld CIT(A) on 05-03-2004 and the same was supplied to the assessee on 04-03-2015. The delay that has occurred in supplying copy of order cannot be attributed to the assessee, since it is beyond the control of the assessee. I notice that the assessee has filed appeal before the Tribunal on 31.3.2005, i.e., immediately after the receipt of copy of order.

18. The issue before me can be looked from another angle. I notice that the Hon'ble Accountant member, even though declined to condone the delay, yet he has adjudicated the grounds urged on merits. The Hon'ble Judicial Member has also agreed with the view taken by Hon'ble Accountant Member on the grounds urged on merits. Thus, in effect, the appeal has been disposed of on merits. The Hon'ble Madras High Court considered an issue relating to condonation of delay in the case of Vijayeswari Textiles Ltd vs. CIT (2003)(131 Taxman 833) on identical circumstances, i.e., in the case before Hon'ble Madras High Court also, the Tribunal had refused to condone the delay, but disposed the appeal on merits also. The Hon'ble Madras High Court observed as under:-

“7. Matters relating to condonation of delay are indeed discretionary and are normally left to the Tribunal and this court will not ordinarily interfere with the discretion. In this case, as we have already pointed out, the Tribunal did not stop with the order declining to condone the delay, but considered the matter on merits and has practically treated

the appeal as being properly before it and has answered the question brought before it with reference to the material placed on record. It is in the circumstances, we hold that the Tribunal was in error in not condoning the delay. The question regarding the correctness of the Tribunal's holding that the delay is not to be condoned is therefore answered in favour of the assessee and against the Revenue....”

According to the ratio of the above said decision, if the appeal is adjudicated on merits, then refusing to condone the delay is an error.

19. In view of the foregoing, I am of the view that the assessee has shown sufficient cause for the delay in filing appeal before the Tribunal and accordingly I concur with the view taken by Hon'ble Judicial Member.

20. The Registry of ITAT is directed to list these matters before the Division Bench for passing of orders in accordance with the majority view.

Sd/-

**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 22nd October, 2019.

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