FIT FOR PUBLICATION

(HSS) (ANM)
JM AM

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)

BEFORE SHRI H.S. SIDHU JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No:- 7042/Del/2014
(Assessment Year: 2009-10)

Boutique Hotels India (P) Ltd., 3rd Floor, UCO Bank Building Parliament Street, New Delhi-110001.	Vs.	ACIT, Circle-3(1), New Delhi.
PAN No: AAACH2439K		
APPELLANT		**RESPONDENT**

Assessee by : Shri Neel Kanth Khandelwal, Adv.
Revenue by : Shri Sanjog Kapoor, Sr. DR

ORDER

Per Anadee Nath Misshra, AM

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-VI, New Delhi, ["Ld. CIT(A)", for short], dated 28.11.2013 for Assessment Year 2009-10. The grounds of appeal are as under:

"1. That the Ld. CIT(Appeal) has erred in law and on facts in confirming the disallowance of deduction u/s 80IB(7) Rs. 20,62,069/- in respect of hotel at Delwara, Rajasthan.

2. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the disallowance of Rs. 54,84,341/- in respect of Jaipur Project.

3. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the disallowance of netting off of interest of Rs. 19,39,562/-.

4. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

5. That the Appellant craves leave to add/alter any /all grounds of appeal before or at the time of hearing of the Appeal."

(B) Admittedly, this appeal has been filed beyond the time prescribed U/s 253(3) of Income Tax Act, 1961 ("I.T. Act", for short). As per Form No. 36 in which the assessee has filed this appeal; the date of communication of the aforesaid impugned appellate order of the Ld. CIT(A) is 16.12.2013. As per Section 253(3) of I.T. Act, the time limit for filing of appeal is within 60 days of the date on which the order sought to be appealed against is communicated to the assessee. Accordingly, time limit for filing of this appeal was available upto 14th February, 2014. However, the present appeal filed by the assessee was received in Income Tax Appellate Tribunal ("ITAT" for short) on 29.12.2014. A Defect Notice was sent by Registry to the assessee, communicating that the appeal was '*prima facie time barred by 318 Days*'. An affidavit dated 23/10/2018, filed alongwith the appeal filed by the assessee, contains reasons advanced by the assessee for the delay in filing of the appeal; and is reproduced at the next page:

AFFIDAVIT सत्यमेव जयते INDIA STAMP DUTY MAHARASHTRA

I, Manoj Mohan Bagri aged about 40 years, residing at 151, Jupiter Apartment, Cuffe Parade, Mumbai – 400005 do hereby solemnly affirm and state as under:

1. that I am the Director of Boutique Hotels India Pvt Ltd (hereinafter called as "the Company") having its registered office at B – 106, Gujranwala Town, Part – 1, Opp. Model Town – 2, Delhi - 110009

2. that I was inducted in the Company as Director on 05-12-2016

3. that petition for condonation of delay has already been filed with the Honourable Tribunal under the hand of Mr Jayant Goel, the erstwhile Director of the Company

4. that on enquiry with Mr Jayant Goel for the reasons of delay, I have been informed by him that, on receipt of the order of the CIT (A) by the Company, he was advised that the Department may file an appeal against the relief allowed by the CIT(A) and that the Company can then file a Cross Objection within 30 days of the receipt of the grounds of appeal of the Department. However, the Department did not file an appeal against the order of the CIT(A) and the Company lost sight of filing an appeal to the Tribunal. It was after a considerable delay that it was realised that the Department has not filed an appeal with the Tribunal against the relief allowed by the CIT(A) and thereafter, the Company immediately took the matter of filing the appeal to the Tribunal; however, after a delay of 325 days.

I further state that whatever stated hereinabove is true to the best of my own knowledge and belief and I believe the same to be true.

Solemnly affirmed at Mumbai }
this 22nd October, 2018 }

For Boutique Hotels India Pvt. Ltd.

Deponent

Director

(B.1) The assessee also filed petition dated nil seeking condonation of delay in filing of the appeal, which is reproduced below:

To,
The Hon'ble Members,
A Bench, ITAT
New Delhi

Reg.: Boutique Hotels India (P) Ltd.

v

ACIT, Circle – 3(1), New Delhi

Assessment year 2009-10

Petition for condonation of delay

Dear Sir(s),

In connection with the above subject, it is submitted that:-

Appeals are to be filed within 60 days of the date of service of order sought to be appealed against.

The Hon'ble Bench may admit appeals after the expiration of period of 60 days, if it is satisfied that there was sufficient cause for not presenting the Appeal within the period of 60 days.

In the present case the Appeal could not be filed within 60 days of the date of service of notice of hearing as the assessee was advised to file Cross Objections upon change of counsel only, the earlier counsel has advised the assessee other wise.

Under these circumstances, the assessee was prevented by sufficient cause to file the appeal within 60 days of the date of service order sought to be appealed against, it is requested that the delay, of 325 days, in filing of the Appeal may kindly be condoned.

It is further submitted that the power of condonation is expected to be exercised liberally so as to advance the cause of justice. [*Voltas Ltd.* v *DCIT* (2000) 241 ITR 471 (AP)]. This decision is in line with the view taken by the Supreme Court in *Collector, Land Acquisition* v *Mst. Katiji* (1987) 167 ITR 471 (SC).

Prayer

In view of the above submissions it is prayed that the Appeal may kindly be admitted.

Thanking you,
Yours faithfully

For Boutique Hotels India Pvt. Ltd.

(Director) Director

(B.2) The assessee's appeal came up for hearing in Income Tax Appellate Tribunal ("ITAT", for short) on 20.03.2019. The assessee's appeal was treated as unadmitted and was dismissed for the reason that there was no representation from the assessee's side in ITAT on the aforesaid date of hearing on 20.03.2019. The Co-ordinate Bench of ITAT, Delhi inferred that the assessee was not interested to prosecute the appeal and accordingly the assessee's appeal was treated as unadmitted and dismissed vide order dated 20.03.2019. The assessee filed Miscellaneous Application ("M.A.", for short), vide M.A. No. 326/Del/2019 seeking recall of the aforesaid order dated 20.03.2019. Vide another order dated 15.07.2019 of Co-ordinate Bench of ITAT, Delhi, the aforesaid order dated 20/03/2019 was recalled, and the assessee's appeal was restored. It is in this background that the present appeal came before us for hearing. At the time of hearing before us, the Ld. Counsel for the assessee relied on the aforesaid affidavit dated 23.10.2018 [already reproduced in foregoing paragraph no. (B) of this order] and on the aforesaid petition dated Nil [already reproduced in foregoing paragraph no. (B.1) of this order] seeking the condonation of delay in filing of this appeal. However, the Ld. Departmental Representative ("Ld. DR", for short) opposed the assessee's petition for condonation of delay in filing of this appeal.

(B.2.1) We have heard both sides patiently. We have also perused the materials on record carefully. On perusal of the aforesaid affidavit dated 23.10.2018 filed from the assessee's side, it is found that it contains assessee's version of the

reasons for delay in filing of the appeal. We have noticed that the aforesaid affidavit dated 23.10.2018 has not been deposed before any competent authority. The affidavit has also not been made on oath before an authority competent to administer oath. Moreover, the affidavit has not been verified in any manner. In any case, the affidavit has not been made by Mr. Mohan Bagri (Director of assessee company) on the basis of his personal knowledge and information. Instead, it is based on hearsay, being based on the information received from Mr. Jayant Goel, the erstwhile Director of the assessee company. In view of these deficiencies and shortcomings, the affidavit filed from the assessee's side in support of request for condonation of delay in filing of this appeal lacks credibility. At this stage, we may refer to decision in the case of CIT vs. Ram Mohan Kalra 257 ITR 773 (P&H). It was held in this case, that delay can be condoned only for sufficient and good reasons supported by cogent and proper evidence. In this case, Hon'ble High Court upheld the decision of ITAT refusing to condone delay of five days in filing of Revenue's appeal because of the reasons that (a) affidavit of person who was dealing with file, was not filed (b) the relevant records were not produced before the authorities concerned (c) affidavit filed on behalf of the applicant was based on hearsay and no facts were true to the knowledge of the person who filed the affidavit in support of the application for condonation of delay. In this case, Hon'ble Punjab and Haryana High Court held as under:

"The provisions relating to prescription of limitation in every statute must not be construed so liberally that it would have the

effect of taking away the benefit accruing to the other party in a mechanical manner. Where the Legislature spells out a period of limitation and provides for power to condone the reasons supported by cogent and proper evidence. Now it is a settled principle of law that the provisions relating to specified period of limitation must be applied with their regour and effective consequences.

In this regard, reference can be made to the latest law in the case of P.K. Ramachandran vs. State of Kerala, AIR 1998 SC 2276. The relevant portion reads as under:

> *"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court, was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No consts."*

Once the concerned authority applies its mind and declines to condone the delay in filing the appeal for good and appropriate reasons, in that event it cannot give rise to a question of law for determination.

It is clear from the impugned order that the authorities concerned have given three reasons for not condoning the delay.

a) *Affidavit of person who was dealing with the file, was not filed.*
b) *The relevant records were not produced before the authorities concerned.*
c) *Affidavit filed on behalf of the applicant was based on hearsay and no facts were true to the knowledge of the persons who filed the affidavit in support of the application for condonation of delay.*

It will be appropriate to refer to the findings recorded by the Ld. Tribunal in the impugned order, which reads as under:

> *"It is quite clear that the Ld. Departmental Representative himself asked time to produce the relevant affidavit of the relevant person, i.e., 'receipt clerk'. Even at the time of reference application no such 'affidavit' is available. The Income-tax Appellate Tribunal has given finding of fact and as such no question of law arises out of the finding of the Income-tax Appellate Tribunal. The reference application filed by the Revenue is accordingly dismissed."*

The Supreme Court of India in the case of Oriental Investment Co. Ltd. vs. CIT [1957] 32 ITR 664, AIR 1957 SC 852, held as under (857 of AIR 1957 SC):

> *"A finding on a question of fact is open to attack under section 66(1) as erroneous in law if there is no evidence to support it or if it is perverse."*

A full Bench of the Orissa High Court, in the case of Brajabandhu Nanda vs. CIT (1962) 44 ITR 668, considering a somewhat similar question where the appeal was barred by time and reference of the question was declined, held as under:

> *"That the questions referred were not questions of law but questioners of fact since it was a matter of discretion for the Tribunal to condone delay for sufficient cause on the facts and circumstances of each case."*

The consistent view is that such question would be a question of fact simpliciter and would not be covered under the provisions of section 256 of the Act unless such exercise of discretion or conclusion arrived at was perverse or so illogical that no reasonable person could come to such a conclusion. The authorities have exercised their discretion and we find nothing perverse in the impugned orders. Specific reasons have been given in the order which are not only logical but even reflect the conduct of the appellant before the authorities in not producing the record in spite of seeking time.

The authorities which are exercising quasi-judicial powers in discharge of their statutory functions, inevitably have to be vested with some element of discretion in exercise of such powers. Merely because another view was possible or permissible on the same facts and circumstances, per se would

> *not make such controversy a "question of law". So far as such decision of the authority is in conformity to the principle of law and is apparently a prudent one, the court would normally be reluctant to interfere in such exercise of discretion."*

However, even after making of this affidavit dated 23.10.2018, there was still further delay in filing of this appeal, which is obvious from the fact, as mentioned earlier, that the appeal was actually filed on 16.12.2013, which is 68 days after making of the affidavit. From perusal of records, we find that there is no explanation from the assessee's side, for this further delay of 68 days. Leave alone "sufficient cause" the fact is that no cause has been advanced by the assessee for this further delay of 68 days. As there is no explanation for this further delay of 68 days; on this basis alone; the appeal deserves to be dismissed in limine, being barred by limitation. Now, we come to whether there was, in respect of the remaining period of delay excluding the aforesaid 68 days, sufficient cause on the part of the assessee, within the meaning of section 253(5) of I.T. Act; for not presenting the appeal within time prescribed U/s 253(3) of I.T. Act. According to the Director of the assessee's company, the Department had not filed an appeal against the order of the CIT(A) and the company lost sight of filing an appeal to the Tribunal. It is further intimated from assessee's side that it was after a considerable delay that it was realized that the Department had not filed an appeal with the Tribunal against the relief allowed by the CIT(A) and thereafter, the Company immediately took the matter of filing of the appeal to the Tribunal. Thus, it is obvious that there was a conscious decision for not filing

appeal within the time prescribed U/s 253(3) of I.T. Act. Admittedly, it was consciously decided at the assessee's end, to not file appeal, and to instead file the Cross Objection, if appeal was filed by the Revenue. **A conscious decision by the assessee to not file appeal, does not take the character of sufficient cause within the meaning of Section 253(5) of I.T. Act. When it is consciously decided by assessee to not avail of right of filing appeal and to, instead; only avail of right of filing Cross Objection, then the fact that Revenue did not file appeal, and thereby did not present the assessee with an opportunity for filing the Cross Objection; cannot constitute 'sufficient cause' for the assessee for not filing the appeal within the time limit prescribed U/s 253(3) of I.T. Act.** Moreover, on perusal of the records, we find no details regarding who advised the Director of the company to not file appeal and to instead file a Cross Objection upon filing of appeal by Revenue. There are also no details on our records as to whether any action was taken by the assessee against the person who had given such a useless advice. We are terming it as a 'useless advice' because there is no explanation from assessee's side how any knowledgeable professional, well-versed and experienced in law, can ever justify or rationalise the advice to not file appeal, and to instead file Cross Objection if Revenue filed the appeal. There was always going to be a chance that Revenue might not file appeal. For mistake of lawyer to serve as valid consideration for the purpose of condonation of delay in filing of appeal; the mistake must be such as may be made by a professional

lawyer well-versed and experienced in law. If an assessee is genuinely aggrieved by an order referred to in Section 253(1) of I.T. Act, and wishes to appeal in Income Tax Appellate Tribunal; the only plausible advice by a professional lawyer, well-versed and experienced in law, to be given to an assessee, is generally speaking; to avail of right to file appeal suo moto, within the time prescribed U/s 253(3) of I.T. Act instead of waiting for Revenue to file appeal and to thereafter file cross objection. As noted earlier, there was always going to be a chance that Revenue might not file appeal. The right of filing Cross Objection U/s 253(4) of I.T. Act is meant to **protect the interests of a party [Assessing Officer or the assessee] who has been dragged into Litigation in Income Tax Appellate Tribunal by the other party. It is not meant to extent the limitation period prescribed U/s 253(3) of I.T. Act, for a party deciding consciously to not file appeal U/s 253(1) or 253(2) of I.T. Act, as the case may be, read with Section 253(3) of I.T. Act.** The assessee's version seems to be fanciful and concocted; lacking in *bonafides*. Assuming, for the sake of a fuller discussion, (through it has not been stated so by the assessee) that the assessee intended to avoid the payment of appeal fess under Section 253(6) of I.T. Act by way of filing cross objection, instead of filing the appeal; even then, **we must comprehensively reject and disapprove any attempt at evading the payment of statutory fee mandated by Section 253(6) of I.T. Act.** Thus, in view of these facts, we find that elements of *mala* fides, ruse and recklessness are present in the case before us, even if it is accepted, for the sake

of this discussion, that there was advice from assessee's earlier Counsel to not file appeal, and, to instead file cross objection. On further perusal of the records we find that there is also no explanation as to why there was considerable delay on the part of the assessee in realizing that Revenue had not filed the appeal in ITAT against the order of the Ld. CIT(A). This negligence was responsible for further delay in filing of the appeal, and what could otherwise have been delay of a short duration (of a few days), eventually became inordinate delay of more than 300 days. **For an assessee deciding to not file appeal and to instead file Cross Objection, it was of utmost importance to keep a track of whether and when Revenue filed appeal in ITAT. The gross negligence on the part of the assessee in keeping track of this important matter cannot constitute "sufficient cause" for inordinate delay within the meaning of Section 253(5) of I.T. Act.** In view of the foregoing facts and circumstances, it is evident that the assessee has acted in a nonchalant way with lackadaisical propensity for delay; and that the grounds on which condonation of delay has been sought, not only lack *bonafides* completely, but also, are evidently fanciful and concocted. On overall consideration of the facts and circumstances of this case, we are of the view that not only was there gross negligence on the part of the assessee in filing of this appeal within time prescribed U/s 253(3) of I.T. Act; but also complete absence of sufficient cause. **The assessee is seeking an unfettered free play in filing of the appeal at whatever time it pleases even after substantial delay without sufficient cause. Despite inaction**

and negligence; condonation of delay has been sought on fanciful and concocted grounds. We do not wish to promote the notion that ITAT is required to condone the delay in filing of appeal even when there is complete absence of sufficient cause for the delay. We wish to discourage the tendency to perceive delay as a non-serious matter. The lackadaisical propensity for delay exhibited in a non- challant way needs to be curbed; as in the facts and circumstances of the present case before us, when there is complete absence of sufficient cause within the meaning of Section 253(5) of I.T. Act.

(B.3) Although the assessee has placed reliance on the view taken by the Hon'ble Supreme Court in the case of Collector, Land Acquisition v Mst. Katiji (1987) 2 SCC 107 / (1987) 167 ITR 471 (SC), we have, in addition, also considered numerous other decisions of Hon'ble Supreme Court, reported in G. Ramegowda, Major and others v. Special Land Acquisition Officer (1988) 2 SCC 142 Bangalore; Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd. (1962) 2 SCR 762; Shakuntala Devi Jain v. Kuntal Kumar (1969) 1 SCR 1006; Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979) 3 SCR 694; Lala Mata Din v. A. Narayanan (1970) 3 SCR 694; O.P. Kathpalia v. Lakhmir Singh (dead) and others (1984) 4 SCC 66; State of Nagaland v. Lipok (2005) 3 SCC 752; New India Insurane Co. Ltd. v. Shanti Misra (1975) 2 SCC 840; N. Balakrishnan v. M. Krishnamurthy AIR 1998 SC 3222; State of Haryana v. Chandra Mani and (1996)

3 SCC 132; Special Tehsildar Land Acquisition v. K.V. Ayisumma (1996) 3 SCC 132; Oriental Aroma Chemical Industries Limtied v. Gujarat Industrial Development Corporation (2010) 5 SCC 459; Improvement Trust, Ludhiana v. Ujagar Singh and others (2010) 5 SCC 459; Balwant Singh (dead) v. Jagdish Singh (2010) 8 SCC 685; Union of India v. Ram Charan AIR 1964 SC 215; P.K. Ramachandran v. State of Kerala (1997) 7 SCC 556; Katari Suryanarayana v. Koppisetti Subba Rao (2009) 11 SCC 183; Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai (2012) 5 SCC 183; Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106; and B. Madhuri Goud v. B. Damodar Reddy (2012) 12 SCC 693. These aforesaid decisions, including Collector, Land Acquisition v/s Mst. Katiji (supra) on which the assessee has placed reliance, were considered by Hon'ble Supreme Court in the case of Esha Bhattacharjee vs Management Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649. After considering these numerous decisions of Hon'ble Supreme Court, a number of guiding principles were laid down by Hon'ble Supreme Court in paragraph 15 and 16 of the order in the case of Esha Bhattacharjee vs Management Committee of Raghunathpur Nafar Academy and others (supra). The order of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji (supra), on which reliance has been placed from the assessee's side was also considered by Hon'ble Supreme Court in the case of Esha Bhattarcharjee v/s Management Committee of Raghunathpur Nafar Academy and others (supra) while the Hon'ble Supreme Court laid down guiding principles. The guiding principles include, inter alia, the

principles: (a) that lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact; (b) that concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play; (c) that the conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration; (d) that if the explanation referred is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expos the other side unnecessarily to face Litigation; (e) that the entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception; and,(f) that the increasing tendency to perceive delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed within legal parameters. Having regard to detailed discussion of facts and circumstances in foregoing paragraph (B.2.1) of this order, the aforesaid principles (a), (b), (c), (d), (e) and (f) referred earlier in this paragraph are squarely applicable to the present case before us; and are against the assessee.

(C) The assessee has also placed reliance on Voltas Ltd. vs. DCIT (2000) 241 ITR 471 (AP), for the proposition that power of conodonation is expected to be exercised liberally so as to advance the cause of justice. However, even the decision in the case of Voltas Ltd. vs. DCIT (supra) does not advance the case of

the assessee because of clearly distinguishable facts. In Voltas Ltd. vs. DCIT(supra) there was a delay of 26 days, which is much less than inordinate delay of more than 300 days in the case before us. Secondly, in Voltas Ltd. vs. DCIT (supra) the delay had occurred due to misplacement and not tracing the original order in the office of the Counsel. However, there are no such facts in the case before us. Thirdly, in Voltas Ltd. vs. DCIT (supra) the explanation and the reasons given in the affidavit did not give scope for any doubt as to *bona fides.* However, in the case before us, the *bona fides* are not free from doubt. As we noted earlier in the foregoing paragraph (B.2.1) of this order, there are elements of *mala fides*, ruse and recklessness in the case before us. Moreover, as held in Mt. Umma Kulsum vs. Shulam Rasul Khan Bugri AIR 1929 Sind 32; Maung Po Chein vs Po Tha AIR 1931 Rang 80; Nareshwer vs. Chabildas AIR 1934 Nag 52; and in Ma Sein vs. S.T.R.M. Tian AIR 1933 Rang 96, a pleader's gross carelessness affords no ground for condonation. It is well settled, that a legal adviser's mistake in order to justify condonation of delay, must be a *bona fide* mistake; for which reference may be made to Amritlal vs. Phool Chand AIR 1938 Lah 81; Nazia Hasan Khan vs. Ganga Din AIR 1939 Dulh 245; Sajadhaa Bhagat vs. Moi Chand AIR 1941 Pat 1800; J.N. Surty vs. T.S. Chattiyar Firm AIR 1927 Rang 20; Sarmukh Singh vs. Chanan Singh AIR 1960 Purj 512 and Pandit Krisha Rao vs. Trimbak AIR 1938 Nag 156. It is also settled that a mistaken advice given by a lawyer negligently and without due care is not a sufficient cause; as held in Rejputana Trading Co. Ltd. vs. Malaya Trading Agency AIR 1971 Cal 313;

Constancie vs. Casteano AIR 1971 Goa 38; Badrinath vs. Hari Bhagat AIR 1971 J&K 41 (FB); Chunilal vs. State of MP AIR 1967 MP 127, Municipal Board, Lucknow vs. Kali Krishna Narain AIR 1944 Oudh 135 and Sahai vs. Devi Chand AIR 1968 J&K. It is not as if mistake of a legal advisor, however, gross and inexcusable, will entitle an assessee to condonation of delay in filing of appeal. The facts of the case are to be examined to ascertain if there had been negligence or gross want of skill, competence or knowledge on the part of the legal advisor; or whether there was only a mistake that even a skilled legal advisor, well-versed and experienced in law might make that mistake. It is only in the latter case that an assessee may justifiably seek condonation of delay. In any case, the assessee, in the case before us, has not proved that the assessee had indeed received wrong advice by Counsel. As held in Paggopala Rao vs. Dalgonina Saha AIR 1959 Ori 31; Gulsher Ahmed vs. Election Tribunal AIR 1959 Ori 31; Gulsher Ahmed vs. Election Tribunal AIR 1959 MP 108 and Bhakti Mandal vs. Kagendra AIR 1968 Cal 69; the fact that there was lawyer's wrong advice has to be proved by the party seeking condonation of delay. Elaborating this further, it was held in Bhakti Mandal vs. Kagendra (supra) that an applicant applying for condonation of delay on the ground of wrong advice given by his Counsel has to establish by evidence. (a) that the advice was given by a skilled or competent lawyer; (b) that such lawyer had exercised reasonable case; (c) that the view taken by the lawyer was such as would have bene entertained by a competent person exercising reasonable skill. It was also held in Bhakti Mandal vs. Kagendra

(supra) that a copy of legal opinion of the Counsel must be filed of the opinion was in writing; and if the opinion was oral, then sufficient material should be made available to establish that there was no negligence or want of reasonable skill on the part of the lawyer concerned. At this stage, we may also refer to two orders of Hon'ble Delhi High Court, reported in Smt. Phool Sabharwal vs. CIT 141 ITR 774 (Del) and Haro Singh vs. Ajay Kumar Chawla 109 (2004) DLT 297/2004 (72) DRJ 639/2004 AIHC 996 (Del). In the case of Smt. Phool Sabharwal vs. CIT (supra) it was held by Hon'ble Delhi High Court that a reference application filed beyond limitation period due to alleged error on the part of Counsel's clerk was not maintainable. In the case of Haro Singh vs. Ajay Kumar Chawla (supra), request for condonation of delay was rejected and it was held by the Hon'ble Delhi High Court; referring to Babu Ram vs. Devinder Mohan Kaura AIR 1981 Delhi 14, Kankala Gurunath Patro vs. D. Dhanu Patro AIR 1984 Ori 173, and Jagannath Prasad vs. Sant Hardasram Sevashaam AIR 1978 All 250; as under:

"6. …….the Counsel must disclose the circumstances in which incorrect advice was given and it is not sufficient to make a perfunctory and genereal statement that the wrong advice was given bona fide ……". In the case of Babu Ram vs. Devinder Mohan Kaura (supra) it was so held by Hon'ble Delhi High Court that:

> *"31. There is no formula that person is merely to plead mistaken legal advice." The basis of mistaken legal advice should also be disclosed to enable the court to see whether the advice tendered was bona fide or reckless……"*
>
> (emphasis added by us)

(D) In view of the foregoing, we are of the unequivocal view, in the facts and circumstances of this case; that there was absence of "sufficient cause", within the meaning of Section 253(5) of I.T. Act, for not presenting the appeal within period referred to in Section 253(3) of I.T. Act, leading us unhesitatingly to reject assessee's request for condonation of delay in filing of this appeal within time prescribed U/s 253(3) of I.T. Act. In view of detailed discussion; and facts and circumstances of the case as narrated in foregoing paragraphs (B), (B.1), (B.2), (B.2.1), (B.3) and (C) of this order we conclude, in the facts and circumstances of this case, that no cause has been shown by the assessee for delay of 68 days, as already discussed in detail foregoing paragraph (B.2). Moreover, in the facts and circumstances of this case; for the rest of the period of delay in filing of the appeal, the reasons furnished by the assessee did not constitute sufficient cause within the meaning of Section 253(5) of I.T. Act, as already discussed in detail in foregoing paragraph (B.2.1) of this order. For coming to this conclusion, we take guidance from the order of Hon'ble Supreme Court in the case of Esha Bhattacharjee v/s Managemnet Committee of Raghunathpur Nafar Academy and others (supra) which has been discussed in earlier in this order, and which; in our respectful view, in the facts and circumstances of this case, provide better guidance than Collector Land Acquisition v Mst. Katiji (supra), on which reliance has been placed from assessee's side. As we have mentioned earlier, the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition v Mst. Katiji (supra), has already been considered by Hon'ble Supreme Court in the aforesaid

case of Esha Bhattacharjee vs Management Committee of Raghunathpur Nafar (supra). Further, we have already noted in foregoing paragraph (C) of this order that the case of Voltas Ltd. vs. DCIT (supra) on which the assessee has placed reliance, does not advance the assessee's case because of clearly distinguishable facts. Therefore, we have taken guidance from other cases referred in the foregoing paragraph (C) for the views, that **a pleader's gross carelessness affords no ground for condonation of delay**; that **a legal advisor's mistake, in order to justify condonation of delay must be a *bonafide* mistake**; that **mistaken advice given by a lawyer negligently and without due care is not sufficient cause**; that **the mistake should be such, which even a skilled legal advisor, well-versed and experienced in law might make that mistake**; that, **the fact that there was lawyer's wrong advice has to be proved by the party seeking condonation of delay**; and **that the Counsel must disclose the circumstances in which incorrect advice was given and, it is not sufficient to make a perfunctory and general statement that wrong advice was given *bonafide*.** In any case, as noted by us in foregoing paragraph (B.2.1) of this order, the affidavit filed from the assessee's side in support of request for condonation of delay in filing of this appeal, lacks credibility.Hence, the assessee's appeal is held to be barred by Limitation, having regard to Section 253(3) read with Section 253(5) of I. T. Act. Accordingly, the appeal is not admitted, and is dismissed *in limine*.

(D.1) By way of abundant caution, we wish to clarify that we have expressed no opinion on the merits of the various grounds of appeal.

In the result, appeal of the assessee is dismissed.

Order pronounced in the Open Court on 31/10/19

Sd/-	**Sd/-**
(H.S. SIDHU)	**(ANADEE NATH MISSHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 31/10/19
(Pooja)/
*Kavita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI