

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.3397/Del/2016
(ASSESSMENT YEAR: 2007-08)**

ITO, Ward-10(1), Room No.334A,C.R.Building, New Delhi	vs	Gisil Designs Pvt.ltd., 15 th Floor, Eros Corporate Tower, Nehru Place, New Delhi-110019. PAN-AABCG0932H
(Appellant)		(Respondent)
Appellant by		Sh. S.R.Senapati, Sr.DR
Respondent by		Sh. R.S.Ahuja, FCA & Sh. Gurbir Singh Alag, FCA
Date of Hearing		16.04.2018
Date of Pronouncement		20.04.2018

ORDER

PER BHAVNESH SAINI, JUDICIAL MEMBER

This appeal by the Revenue has been directed against the order of Ld.CIT(A)-15, Delhi dated 29.12.2015 for AY 2007-08, challenging the order of Ld.CIT(A) in deleting the addition of Rs.3,26,01,780/- in violation of Rule 46A of the I.T. Rules, 1962 (in short "Rules").

2. Briefly stated facts of the case are that the assessee filed return of income declaring a loss of Rs.3,26,01,780/-. The AO passed ex-parte assessment order u/s 144 of the Income Tax Act, 1961 (in short "Act"). The AO noted that the assessee has not furnished any details, copies of Audited balance sheets and Audit reports etc. therefore, returned loss is not verifiable. Therefore, returned loss of Rs.3,26,01,780/- was disallowed and the income was taken as NIL. The assessee moved an application under Rule 46A of the

I.T. Rules in appeal before Ld.CIT(A) and also filed copies of the Audit Report and balance sheet. It was explained that due to acute financial constraints and staff shortage, the assessee was not able to conduct its normal business activities. Therefore, no notice has been received by the assessee. The assessee shall produce books of accounts as and when required to support returned loss. The assessee, therefore, sought that additional evidences may be admitted. Ld. CIT(A) admitted additional evidences and directed the AO to examine the case properly by calling the books of accounts and other details and asked the AO to furnish the report. Ld.CIT(A) sent several reminders to the AO for sending the reports. The details of same are noted in para 6.3 of the appellate order but the AO did not submit any report to Ld.CIT(A). Ld.CIT(A) in the absence of any challenge to the additional evidences and in the absence of any report from the AO, considered the additional evidences. Ld.CIT(A) noted that the AO simply disallowed the returned loss solely on the basis that the Audit Report alongwith financial results were not produced before it as assessment stage. The order of the AO was, accordingly, set aside and appeal of the assessee has been allowed. As regards, carry forward of the previous year losses, the AO was directed to verify the same from the record and pass the order accordingly. Ld.CIT(A) pass the impugned order dated 29.12.2015.

3. Column No.9 of the appeal shows that impugned order has been served upon the Department on 07.01.2016. However, the appeal has been filed by the Department in office of the Tribunal on 08.06.2016. Thus, the appeal of the Revenue is time barred by 92 days.

4. ITO, Ward-10(1), New Delhi filed an application for condonation of delay. It is stated that authorization to file the appeal has been granted by Ld.CIT on 07.06.2016. Due to time barring scrutiny assessment, in the month of March 2016, the above impugned order was overlooked and got barred by limitation of time for filing before the Tribunal.

5. Ld. DR referred to the application of condonation of delay and submitted that due to time barring scrutiny assessment, the impugned order was overlooked, therefore, liberal view may be adopted. Ld. DR submitted that delay in filing the appeal may be condoned. On the other hand, Ld. Counsel for the assessee strongly opposed the request for condonation of delay by the Department and submitted that it is a case of negligence on the part of the Department in overlooking the impugned order, therefore, delay may not be condoned.

6. We have considered rival submissions. It is well settled that Tribunal can condone the delay, if there was sufficient cause for delay in submission of the appeal. Hon'ble Supreme Court in the case of *Office of the Chief Post Master General & Others vs Living Media India Ltd. & Another* [2012] 348 ITR 7 (SC) held as under:-

“The respondent, a company publishing magazines registered as newspapers with the Department of Posts and entitled to transmit its publications by post under concessional rate of postage, was denied permission to post issues of two of its magazines containing advertisements at concessional rates. The company filed writ petitions which a single judge of the High Court allowed and on appeal by the Postal Department, this was affirmed by a Division Bench of the High

Court by order dated September 11, 2009. The Postal Department preferred appeals to the Supreme Court by way of special leave with a delay of 427 days with applications for condonation of delay in filing the petitions for special leave :

Held, dismissing the applications, the Department had itself mentioned in its affidavit and was aware of the date of the judgment of the Division Bench of the High Court as September 11, 2009. Even, according to the deponent, its counsel had applied for the certified copy of the judgment only on January 8, 2010, and the copy was received by the Department on the very same day. There was no explanation for not applying for certified copy of the judgment on September 11, 2009, or at least within a reasonable time. The fact remains that the certified copy was applied for only on January 8, 2010, i.e., after a period of nearly four months. Neither the Department nor the person in-charge had filed an explanation for not applying for the certified copy within the prescribed period. The other dates mentioned in the affidavit clearly showed that there was delay at every stage and there was no explanation as to why such delay had occasioned. The Department or the person concerned had not evinced diligence in prosecuting the matter to the court by taking appropriate steps. The persons concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in the Supreme Court. In the absence of plausible and acceptable explanation, the delay could not be condoned mechanically merely because the Government or a wing of the Government was a party before the court. Though in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession had to be adopted to advance substantial justice, in the facts and circumstances, the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes could not be accepted in view of the modern technologies being used and available.

Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Department had failed to give acceptable and cogent reasons sufficient to condone such a huge delay.

By THE COURT: Unless government bodies, their agencies and instrumentalities have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months or years due to considerable degree of procedural red-tape in the process. Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. The law of limitation binds everybody including the Government.”

7. ITAT, Delhi Bench in the case of *ACIT vs Vimal Mehra [2012] 28 taxmann.com 210 (Delhi)* has held as under:-

“Delay of 557 days in filing appeal by revenue taking ground of oversight and pressure of workload is found to be neither reasonable nor sufficient ground and, therefore, condonation of such delay is rightfully denied.

8. Hon’ble Punjab & Haryana High Court in the case of *CIT vs Ram Mohan Kabra [2002] 257 ITR 773* has held as under:-

“Where the Legislature spells out a period of limitation and provides for power to condone the delay as well, such delay can only be condoned only for sufficient and good reasons supported by cogent and proper evidence. It is a settled principle of law that provisions relating to the sufficient period of limitation must be applied with their rigour and effective consequences. In this case delay for filing the appeal late for only a few days was not condoned.

9. In the case of *Asstt. CIT vs Taggas Industries Development Ltd. [2002] 80 ITD 21 (Cal.)*, Tribunal, Calcutta Bench, Calcutta, did not condone the delay for filing the appeal late by 13 days because the delay was not due to sufficient cause.

10. In the present case, Ld. CIT(A) on admitting the additional evidences directed the AO to examine the case properly by calling the books of accounts and other details and file a Remand Report. However, despite giving several sufficient opportunities, the AO did not file the Remand Report before Ld.CIT(A). He did not examine books of account and other details. Therefore, AO has shown negligency in not filing the Remand Report before Ld.CIT(A). The same conduct of the AO continued even after passing of the impugned appellate order because the appellate order was kept pending without any action and no appeal has been filed by the Department within the period of limitation. It is simply stated in the application for condonation of delay that due to time barring assessment, the impugned order was overlooked and got barred by limitation. However, it is a fact that AO was aware that departmental appeal would be meritless. It is, therefore, clear that the AO deliberately overlooked the impugned order and did not file appeal before the Tribunal within the period of limitation. Even the authorization by Ld. Pr. CIT to file the appeal have been granted after the period of limitation to file the appeal on 07.06.2016. Therefore, no sufficient cause has been shown to explain the delay in filing the appeal before the Tribunal beyond the period of limitation. The application is not supported by any evidence. We, therefore,

hold that the Revenue Department has failed to explain the delay in filing the appeal was due to sufficient cause, therefore, the appeal of the Revenue shall have to be dismissed as time barred. We reject the application for condonation of delay and treat the departmental appeal as time barred and dismiss the same in limine.

11. In the result, the appeal filed by the Revenue is dismissed.

Pronounced in the open court on 20.04.2018.

**Sd/-
(O.P.KANT)
ACCOUNTANT MEMBER**

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

Date:- 20th April, 2018

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI