

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH "A"**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos.1337 to 1339/Bang/2013
(Asst. Years 2002-03 to 2004-05)

M/s Karnataka Road Development Corporation,
Institute of Town Planner,
Miller Tank Bund Area,
Bengaluru.

. Appellant

Vs.

The Asst. Commissioner of Income-tax,
Circle-11(3),
Bengaluru.

. Respondent

Appellant by : Shri Chandrashekar, Advocate
Respondent by : Shri C.H Sundar Rao, CIT

Date of Hearing : 13-8-2018

Date of Pronouncement : 21-8-2018

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

These three appeals by the assessee are directed against the common order of the CIT(A)-1, Bangalore dated 31/3/2008 for asst. years 2002-03 to 2004-05. These appeals were heard together and having common issues are being disposed off by way of this consolidated order.

2 Briefly stated, the facts of this case are as under:-

2.1 The assessee is a public sector company of the Govt. of Karnataka which is engaged in the construction of infrastructure such as roads, bridges etc. on Build Operate Transfer ('BOT')/Build Operate Own Transfer ('BOOT')/Build Own Lease Transfer ('BOLT'). The details of the income declared and assessed for the three asst. years 2002-03 to 2004-05 are as under.

Asst Year	Refunded Loss/Income (Rs.)	Assessed Income/ Loss (Rs.)
2002-03	(-) 2,83,13,766/-	(+) 62,56,880/-
2003-04	(-) 22,12,99,010/-	(-) 12,40,54,965/-
2004-05	(-) 23,06,95,640/-	(-) 11,95,86,195/-

While concluding the assessments, additions/disallowances were made, inter alia in respect of (i) the assessee's claim for depreciation and (ii) interest income. On appeal, the CIT(A)-1, Bangalore vide the impugned orders dated 31/3/2008 for three years allowed the assessee partial relief. In doing so, the Id CIT(A) allowed the assessee's claims in respect of interest income, but upheld the Assessing Officer's ('AO') view in disallowing the assessee's claim for depreciation on bridges.

3. Aggrieved by the combined orders of the CIT(A)-I, Bangalore dated 31/3/2008 for asst. years 2002-03 to 2004-05, the assessee has filed these appeals before the Tribunal, wherein it has raised almost identical grounds (except for figures involved)

challenging the order of the Id CIT(A) in upholding the AO's action in denying the assessee's claim for depreciation on bridges. In this regard, we extract hereunder only the grounds raised in the assessee's appeal for asst. year 2002-03.

“1. The order of the learned Commissioner of Income-tax [Appeals] in so far as it is against the appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies itself liable to be assessed on a total income of Rs.62,56,880/- as against returned loss of Rs.2,83,13,766/- under the facts and circumstances of the case.

3. The learned CIT(A) was not justified in confirming the addition of Rs.1,58,02,402/made by the learned assessing officer being claim of depreciation on bridges on the facts and circumstances of the case.

4. The learned CIT(A) failed to appreciate that the appellant had completed the construction of the bridges and allowed them for public use and further the appellant is in absolute possession of the bridges and exercises dominion over the and eligible for depreciation as per Explanation 1 to Section 32 under the facts and circumstances of the case.

5. The (earned CIT(A) was not justified in confirming the addition of Rs.1,81,71,708/as income from other sources being the interest income earned on the surplus HUDCO Loan relating to the bridges capitalized during the

year and Capital Workin-progress and also interest on mobilization advance.

6. The Learned CIT(A) failed to appreciate that the interest earned is in the nature of capital receipt and hence the same cannot be treated as income from other source under the facts and circumstances of the case.

7. The Appellant craves leave to add, alter, substitute and delete any or all of the rounds of appeal urged above.

8. For the above and such other grounds to be urged at the time of hearing, the peal prays that the appeal be allowed for the advancement of substantial cause of justice and equity.

Order on assessee's petition for condonation of delay in filing the appeals for AY's 2002-03 to 2004-05

4.1 At the outset, it was noticed that there was a delay of 1928 days in filing these three appeals for asst. years 2002-03 to 2004-05 by the assessee in respect of the impugned orders of the CIT(A) dated 31/3/2008. These three appeals were filed on 18/9/2013, i.e., a delay of more than 5 years. Along with the appeals, the assessee has filed almost identical affidavits alongwith petitions for condonation of delay for the three years involved. Therefore, in view of the above, we extract hereunder the written submissions put forth by the assessee in its application for condonation of delay in filing the appeal for asst. year 2002-03 only:-

- 1. The appellant is a Government of Karnataka undertaking engaged in the business of infrastructure development. The appellant acquires land and develops it by constructing roads and bridges which are allowed for use of general public from which appellant collects toll revenue to earn profit. For the relevant previous year, the appellant filed its return of income declaring a total loss of Rs.2,83,13,766/-.*
- 2. The case was selected for scrutiny and the learned assessing officer passed an order under Section 143(3) of the Act dated 29/03/2005 disallowing the claim of depreciation on Bridges & treated the interest received on HUDCO Loan treated as income for Other sources.*
- 3. Aggrieved by the order of assessment, the appellant preferred an appeal before the Commissioner of income-tax [Appeals] I, Bangalore who confirmed the action of the learned assessing officer vide order under Section 250 of the Act dated 31/03/2008.*
- 4. It is submitted that the appellant engaged the present counsel for filing of Appeal Et represent before this Honourable Tribunal in respect of First Appellate order passed for the assessment year 2005-06. During the course of hearing for the Assessment Year 2005-06, the present counsel enquired about the status as regards the preceding assessment years i.e. 2002-03, 2003-04 Et 2004-05 in as much as the issues involved were common and the income Tax authorities had been taking a consistent view in all these years. The appellant informed the present counsel that no second appeal was filed before the Income Tax Appellate Tribunal in respect of*

these preceding years as the previous counsel of the appellant had advised against filing the second appeal.

5. The appellant, was informed by the present counsel, that prima fade it has a very good case on both the legal issues as well as on the merits of the matter and was advised that it was necessary to file an appeal against the order of the learned Commissioner of Income Tax [Appeals] - I u/s 250 of the Act before the Hon'ble Income Tax Appellate Tribunal for the all the three preceding assessment years Et this advice was received on 11/09/2013.

6. The appellant submits that immediately within 7days of obtaining the professional advice from the present counsel all efforts were made to file this appeal challenging the order passed by the learned Commissioner of Income Tax [Appeals] - I, Bangalore before this Hon'ble Income Tax Appellate Tribunal on 18/09/2013.

7. In view of the above fact the Appellant could not file the Appeal before this Hon'ble Income Tax Appellate Tribunal in time and by the time the appellant received advice from the present counsel's there arose a delay of 1928 days in filing of this appeal before this Hon'ble Income Tax Appellate Tribunal.

8. It is humbly submitted that in the earlier petition for condonation of delay filed by the Appellant, the Appellant had inadvertently prayed before this Hon'ble Tribunal to condone the delay of 1914 days. The registry has raised a defect notice as regard to the delay in filing the appeal before this Hon'ble Tribunal by 1928 days

as against the delay calculated by the appellant of 1914 days. The mistake by the Appellant in the earlier petition as regards the computation of actual number of days of delay for condonation of delay is purely attributable to statistical error and it is submitted that the defect pointed out is taken note of and complied with in this condonation of delay petition seeking this Hon'ble Tribunal to condone the delay of 1928 days in filing the appeal before this Hon'ble Tribunal' for the very same reasons mentioned above and the reasons that was mentioned in the original application for condonation of delay dated 17/09/2013 filed before this Hon'ble Tribunal.

9. It humbly prayed that this Hon'ble Income Tax Appellate Tribunal takes a lenient and compassionate view and condone the delay of 1928 days in filing the present appeal against the order of the learned Commissioner of Income Tax [Appeals] - I, passed under section 250 of the Act which is solely due to wrong professional advice and hear the same on merits for the advancement of substantial cause of justice.

10. It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the appellant would be put to great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondent if this application of Condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST.Katiji and Others (1987) 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118

ITR 507. Further the appellant relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank Et Others [2000] 9 Supreme Court Cases 733 and Commissioner of Income-tax Vs. West Bengal Infrastructure Development Finance Corporation Limited (2011) 334 ITR 269 (SC).

11. Reliance is placed on the unreported decision of the Hon'ble Jurisdictional High Court in the case of CIT & Another Vs. ISRO Satellite Center, in ITA No. 532 of 2008 and other batch of appeal order dated 28/10/2011 has condoned the delay of 5 years in filing the appeal before the CIT[A], the relevant observation is at para 28 page 72 of the order.

12. Reliance is also placed on the decision of the Hon'ble Jurisdictional Tribunal in the case of Smt. Shakuntala Hegde, Legal Heir of Mr. Ramakrishna Hegde Vs. ACIT, in TA No. 2785/Bang/2004 order dated 25/04/2006 wherein the Hon'ble Jurisdictional Tribunal has condoned the delay of 1,331 days i.e. 3 Years, 8 Months and 22 days in filing the appeal by the assessee.

13. Wherefore, it is once again prayed that the delay of 1928 day may be condoned for the advancement of substantial cause of justice and equity.”

The ld AR for assessee was heard in support of the assessee's plea for condonation of delay for asst. years 2002-03 to 2004-05.

4.2 Per contra, the Id counsel for Revenue opposed the assessee's plea for condonation of the delay in filing the appeals for asst. years 2002-03 to 2004-05 before the Tribunal.

4.3.1 We have heard both parties and perused and carefully considered the material on record, including the judicial decisions cited. The Hon'ble Apex Court in the case of Vedabai alias Vajjayanatabai Baburao Patil V Shantaram Baburao Patil & Ors (2002) 253 ITR 798 has held that while exercising discretion, distinction should be made between a case where the delay is inordinate and a case where the delay is of a few days, which may deserve a liberal approach. The exercise of discretion, their Lordships observed, would depend on the facts of each case and no hard or fast rule can be laid down in this regard. In the above cited case, the application for condonation of delay in filing the appeal was 7 days. In the case of Ganga Sahai Ram Swarup V ITAT (2004) 271 ITR 512 (All) the delay was of 12 days in filing the appeal and it was held therein that a liberal view ought to be taken, as there was a delay of only a very short period. Even in the landmark decision on the issue of condonation, Collector, Land Acquisition V MST Katiji (Supra), cited by the assessee, wherein the Hon'ble Apex Court laid down that Courts should have a liberal and practical approach in exercising its discretionary powers of condonation of delay, the delay was of 4 days. Therefore, it is clear that condonation is not a matter of right and there has to be reasonable cause for the same. Each case, therefore, has to be

weighed from its own facts and circumstances. As per the facts of the case on hand, admittedly the delay is of 1928 days in filing the appeals before the Tribunal for asst. years 2002-03 to 2004-05.

4.3.2 From a perusal of the averments made in paras 4 to 9 of the assessee's petition for condonation of delay in filing these appeals before the Tribunal, we are of the view that not only are the submissions made therein merely self serving statements, the veracity of which are not established but also there is an inordinate delay of 1928 days. The assessee in its averments has not made out a case that there was reasonable cause, which being beyond the control of the assessee, that prevented it from filing the appeals in time before the Tribunal. The delay cannot be condoned merely because the assessee's case calls for sympathy or merely out of benevolence. For the exercise of discretion in condoning the delay, it must be established beyond the shadow of doubt that the assessee was diligent and not guilty of negligence on its part. "Sufficient cause" as contemplated in the limitation provisions, at sec 5 of Limitation Act, 1963 must be a cause which is beyond the control of the party. In the case on hand, the factual matrix, in our view, clearly establishes that the delay was due to the negligence and inaction on the part of the assessee, which could have been avoided by the assessee if it had exercised due care and attention. Therefore in our opinion, in the factual matrix of this case there exists no sufficient and reasonable cause for the inordinate delay of 1928 days in filing the appeals for Assessment Years 2002-03 to 2004-05 by the assessee. In coming to this finding, we draw support

from the decisions of the Hon'ble Apex Court in the case of MST Katiji (Supra), Vedabai alias Vijayanatabai Baburao Patil (Supra) of the Hon'ble Allahabad High Court in the case of Ganga Sahai Ram Swaroop (Supra) and of the ITAT, Chennai Bench (Third Member) in the case of JCIT V Tractors & Farm Equipments Ltd., (2007) 104 ITD 149 (Chennai) (TM). The cases cited by the assessee of various courts and of the co-ordinate benches of this Tribunal (Supra), have been duly considered and with due respects we find the factual matrix different therein. We have considered the factual matrix of this case to reach the finding that there existed no sufficient and reasonable cause for the inordinate delay of 1928 days in filing the appeals as the assessee has also not been able to establish that it was prevented by "sufficient causes" beyond its control from filing these appeals on time. In this view of the matter, we are of the opinion that, in the case on hand, the cause of substantial justice would not be served by condoning the inordinate delay of 1928 days in filing these appeals for which no reasonable and sufficient cause has been established. We accordingly reject these petitions for condonation of delay for Assessment Years 2002-03 to 2004-05. Consequently, the assessee's appeals for Assessment Years 2002-03 to 2004-05 are not admitted for adjudication on merits and are dismissed in limine.

5 In the result, the assessee's appeals for Assessment Years 2002-03 to 2004-05 are dismissed.

Order pronounced in the open court on **21st August, 2018.**

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore
Dated : 21/8/2018
Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P.S.....
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.