IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND

SHRI SANJAY GARG, JUDICIAL MEMBER

ITA no.3403/Mum. /2014
(Assessment Year: 2001-02)

Perfect Circle India Lmt., Formerely Known as Perfect Circle Victors Lmt., 10 Prasad Chambers, Opera House, Charni Road Mumbai 400 0004 AAACP0482E	……………. Appellant
v/s	
ACIT Range 5 Aayakar Bhavan, M.K. Road Mumbai 400 020	……………. Respondent

Assessee by : Shri. Rakesh Mohan
Revenue by : Ms. Arju Garodia

Date of Hearing –22.02.2017	Date of Order – 28.02.2017

O R D E R

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of learned CIT-A dated 01/11/2004, and pertains to assessment year 2001– 02.

2. At the outset it is noted that the appeal is time-barred by 3389 days.

3. For seeking condonation of the delay assessee has filled an affidavit dates 31.10.2015. In this affidavit following submissions have been made;

The Company has been regularly filing appeal with Tribunal for last 10 assessment years within time limit as prescribed in the Income Tax Act. 1961 ('the Act'). However the appeal for the year under consideration was inadvertently not flied. There has been delay of 10 years in filing the appeal. However the delay was neither deliberate nor intentional on the part of appellant and was only on account of inadvertent error. Further, the concerned person who was handling the tax matters on behalf of the Company at that point of time, has also left the company.

Further the grounds of appeal include

a) Ad-hoc disallowances -The Tribunal in earlier years and also in subsequent years in the appellant's own ease has held that ad-hoe disallowance could not be made

b) Rest of the grounds are more or less covered by the orders of the Tribunal iii our own case.

c) Legal issues which are required to be judicially decided by the Tribunal

The Company therefore submits that the above unintentionally delay occurred while filing the appeal should be condoned and admit the appeal filed by the Company.

I am fully conversant with the facts of the case. I say that whatever is stated hereinabove is true to the best of my knowledge and I believe the same to be true.

This has been signed by a director.

4. Assessee has filed another affidavit dated 08.11.2016. In this affidavit the submissions are as under:

> *I, Haresh Advani. aged 56 years, have been working for Anand group for the last fourteen years and have been entrusted with the job of assisting M/s. B K Khare & Co., the firm of Chartered Accountants looking after Income Tax matters of the group. In my role as above. I have been maintaining records and documents of the group including its files etc. in the office of M/s B K Khare & Co., Chartered Accountants and have been assisting and operating in close coordination with officials and employees of the said C.A. firm. In accordance with above, I have been managing and maintaining records and documents of Anand I Power Limited, an Anand group company, having PAN no AAACPO482E (Formerly known as Perfect Circle Victor Limited)*

(Formerly known as Perfect Circle India Limited) ('the Company"). I herewith do solemnly affirm as under:

1. *That the proceedings of hearing before ITAT in respect of Anand I Power Limited for AY, 2001-02 was going on wherein the appeal was filed late and Shri Rajesh Athavale, partner of M/s B.K. Khare & Co. was representing the case. I had been assiting him for all requirements as and where required by him.*
2. *That an affidavit dates 31st October 2015 had been filed before ITAT to substantiate the delay in filling of appeal, which affidavit is a part of record.*
3. *That in the said affidavit dated 31st October 2015 the reasons for delay in filling appeal were stated to be inadvertent lapse after receipt of order of appellate Commissioner.*
4. *That around July 2016 I was informed by Shri Prasad Bapat of B.K.Khare & Co, Chartered Accountants that Shri Rajesh Athavale, Partner had resigned from B.K. Khare & Co. and the Company Anand I Power Limited had decided to appoint Shri Rakesh Mohan, Former Commissioner of Income Tax as counsel to represent the matter before ITAT.*
5. *That Shri Prasad Bapat directed me to be in a state of readiness with all files and documents because the new counsel Shri*

Rakesh Mohan would like to have a glance over all papers related to the matter.

6. *That I accordingly took out the files and started putting and verifying the documents to be available and to be in chronological order.*
7. *That in the process of analyzing the records I came across duly executed appeal papers Form No. 36 for A.Y. 2001-02 signed by the Director Shri A. K. Agarwal on 2" January 2005, which apparently had remained to be filed and knowing the background facts of delay in filing of appeal I immediately informed Shri Prasad Bapat about the documents.*
8. *On analyzing these documents the matter was discussed with Shri Rakesh Mohan who on analysis of the documents desired to know whether fee had also been paid then and, when this was subsequently confronted to the company officials, it was confirmed that fee of Rs. 10,000/- (Rupees ten thousand only) had also been paid on 6th January 2005 vide cheque no 147415 drawn on Union Bank of India which was cleared on 81N January 2005.*
9. *That the Form No. 36 for A.Y. 2001-02 signed by the then Director Shri A. K. Agarwal on 2 January 2005 thus found and*

referred in preceding paragraph is enclosed with this affidavit 'in original' alongwith copy of evidence of payment of fee referred.

5. We have heard both the counsel on the issue of condonation of delay. It transpires that there is an inordinate delay of 3389 days, which amounts to over nine years delay in filing the appeal. In the first petition for condonation of delay it was submitted that there has been a delay of 10 years which is inadvertent. No reason whatsoever for the delay has been mentioned. Thereafter another petition has been filed by another person as above. In this affidavit it has been submitted that he has found in the drawer of the CA firm a duly executed appeal papers form number 36 for assessment year 2001 - 02 signed by the director on 2 January 2005. It has further submitted that a fee of Rs. 10,000/- and also been paid on 6 January 2005 vide cheque number 147415 drawn on Union Bank of India which was cleared on 8th, January 2005. No reason whatsoever for not filing the above said appeal has been mentioned or found.

6. In this background the assessee has requested the tribunal to condone this delay of about 10 years.

7. In support of the above an appeal paper has been filed which has been claimed to be original appeal which was not filed. No reason whatsoever for not filing this appeal has been mentioned. The Ld. Counsel of the assessee has attributed this to the CA firm. However no

such supporting evidences has been provided. In the bank statement produced for showing tribunal appeal filing fee there are three entries on 8/1/2005 of Rs.10,000 each mentioned as direct tax. No copy of challan for the contents /purpose of the payment has been produced. Only internal document has been shown purporting to be appeal fee for the year "2000-01 A.Y. (2000-01)". So no cogent evidences of paying appeal filing fee is produced.

8. We find that by claiming that assessee has found appeal papers prepared 10 years ago, assessee has tried to make a reasonable cause for the delay. First of all, we find that this claim of preparation of appeal papers 10 years ago is not cogent. There is no veracity in the claim of payment of tribunal fee. No challan has been produced. The bank statement shown doesn't support this claim. Hence the claim that appeal papers were prepared but were inadvertently not filed has no cogency. It remains beyond preponderance of probability that assessee and his consultant will keep on filing income tax returns and file subsequent appeals without the concerned chartered accountant or the assessee being aware of not filing of appeal for assessment year 2001-02, for ten years.

9. The assessee in the submissions has placed reliance upon several case laws for the condonation of delay in filing of appeal. However we note that condonation of delay is a matter which relate to

the facts of the case. In the present case we find that there has been an inordinate delay of about 10 years without cogent reasoning. As a matter of fact period of delay is much more by a huge margin than in any of the other case law mentioned by the assessee.

10. In this regard we may refer to the decision of third member decision of ITAT chennai in the case of joint Commissioner of income tax vs tractors and farm equipment Ltd 104 ITD 149, for the following proposition;

"A distinction must be made between a case where the delay is inordinate and a case where the delays is of a few days. Whereas in the former case, the consideration of prejudice to the other side will be a relevant factor, so the case calls for a more cautious approach, in the latter case, no such consideration may arise and such a case deserve s a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case, keeping in mind that in considering the expressions 'sufficient cause', the principle of advancing substantial justice is of prime importance.

The law assists those who are vigilant, not those who sleep over their rights. This principle is embodies in the dictum: vigilanti-bus non dormientibus jura subveninut.

The delay cannot be condoned simply because the appellant’s case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence, whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The cause for the delay in filing the appeal, which by due care and attention, could have been avoided, cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, or inaction, or want of bona fides can be imputed to the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands.”

11. Thus examining the present case on the touchstone of above, we find that in this case there has been inordinate delay of about 10 years in filing the appeal. Firstly, the assessee had submitted that it was an inadvertent error. In another affidavit assessee had tried to submit that appeal papers were prepared but were not filed without any reason by the Charted Accountant. The submission is not supported for its veracity or reasoning. Furthermore, there is no rationale in allowing a person to file an appeal after ten years simply

because ten years ago also he had thought of filing the appeal. There can be many reasons why a person having thought of filing an appeal may decide not to pursue the matter. Hence the contents of the second submission cannot be treated but as an afterthought.

12. In these circumstances in our considered opinion the delay of 3389 days doesn't deserve to be condoned. Accordingly, we decline to condone the delay. As such the appeal is dismissed as time-barred.

In the result this appeal by the assessee stands dismissed.

Order pronounced in the Open Court on 28.02.2017

Sd/-	**Sd/-**
SANJAY GARG **JUDICIAL MEMBER**	**SHAMIM YAHIYA** **ACCOUNTANT MEMBER**

MUMBAI, DATED: 28.02.2017

<u>Copy of the order forwarded to</u>:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

By Order

Nishant Verma
Sr. Private Secretary

(Dy./Asstt.Registrar)
ITAT, Mumbai