IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'D', MUMBAI

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTAT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

I.T.A. NO.6979/M/2010 (AY: 2006-2007)
I.T.A. NO.6980/M/2010 (AY: 2006-2007)

Shri Dilip C. Bagri, 404, Stock Exchange tower, Dalal Street, Fort, Mumbai – 400 001. PAN: AACPB 2283 J	Vs.	Income Tax Officer-4(1)(1), Room No.636, Aayakar Bhavan, Churchgate, Mumbai – 400 020.
(Appellant)		(Respondent)

Appellant by	:	Shri Nitish S. Joshi
Respondent by	:	Shri Jitendra Yadav

Date of Hearing:18.3.2013 Date of order: 01.05.2013

O R D E R

Per D. KARUNAKARA RAO, AM:

There are two appeals under consideration and they are filed by the assessee for the assessment year 2006-07. For the sake of convenience, both the appeals are being clubbed and disposed of in this consolidated order.

2. Firstly, we shall take up ITA No.6979/M/2010, which is filed by the assessee against the order of CIT (A)-8, Mumbai dated 29.7.2010 for the assessment year 2006-07. In this appeal, assessee raised the following grounds which read as under:

"1. The CIT (A) erred in not condoning the delay in filing the appeal and dismissing the same as barred by limitation.
2. The CIT (A) erred in observing that delay in filing the appeal has occurred as the appellant was non-vigilant. He failed to appreciate that the appellant had filed a rectification application before the Assessing Officer. He was pursuing with the same and was hopeful that the said application will be allowed.
3. The CIT (A) ought to have held that the AO was not justified in treating the gain of Rs. 1,79,025/- as short term capital gain. He failed to appreciate that the said gain had arisen on listed securities which were held by the appellant for a period of more than 12 months.
4. The CIT (A) ought to have held that the AO erred in disallowing expenditure of Rs. 81,512/- u/s 14A of the Act as expenditure incurred in relation to earning of income which does not form part of the total income.
5. The CIT (A) ought to have held that the AO had charged tax in respect of long term capital gains @ 10% and, therefore, the appellant could not have filed an appeal against the observation in the assessment order that such income ought to be assessed @ 20%.

6. The CIT (A) ought to have held that the long term capital gain arising on transfer of bonds / debentures should be taxed @ 10%."

3. Grounds raised by the assessee in this appeal are elaborative and argumentative. The core issue that has to be adjudicated by us revolves around the **decision of the CIT (A) in rejecting the condonation request of the appeal filed before the CIT (A) with the delay of 307 days, which is undisputed**. Relevant facts and the dates, which are important for adjudicating the appeal, are assessment order dated 29.12.2008 was received by the assessee on 31.12.1008. Assessee filed the appeal before the CIT(A) against the order of AO with the delay of 307 days on 3.11.2009. After receiving the assessment order, the assessee moved an application for rectification u/s 154 of the Act on 7.5.2009. The same is still pending for adjudication. In the meanwhile, the Assessing Officer levied the penalty u/s 272(1)(c) of the Act in respect of the additions made by the AO. However, considering the fact that the Assessing Officer did not attend to the rectification application of the assessee dated 7.5.2009, even till date. The issues raised in that rectification application, thus, not finalized by the AO. In the above factual matrix of the case, Ld Counsel for the assessee mentioned that the assessee would not have filed appeal before the CIT (A), if the issues being identical to the ones raised in Form No.35 are adjudicated by the AO. Therefore, the application made by the assessee u/s 154 of the Act, which has not been attended was because of belated filing of the appeal before the CIT (A). Further, Ld Counsel brought to our notice the fact that the assessee was appreciated as a non-vigilant, ignoring the fact that the assessee has been cooperative with the 154 proceedings and 271(1)(c) proceedings before the AO which is undisputed. Further, he also mentioned that the right of appeal is a precious right and the assessee was aware of its value, therefore, he wanted first exhaust the 154 channel before an appeal is finally filed before the first appellate authority. AO's failure to attend to the rectification application constitute a reasonable ground for condonation of the delay before the CIT (A) which was not properly appreciated by the CIT (A) as evident from the impugned order dated 29.7.2010.

4. On the other hand, Ld DR argued vehemently stating that the assessee does not deserve lenient approach which is often done in the matters of condonation of delay. Ld DR relied on the contents of the reasoning given by the CIT (A) in the impugned order.

5. We have heard both the parties and perused the orders of the Revenue and find that there is no dispute on the quantum appeal as well as the dates of the proceedings cited above. In this regard, we perused the issues raised in the application u/s 154 of the Act, copy of which is placed in the paper book, and find that the said issues have a bearing on the issues raised in Form No.35 of the Act before the CIT (A). It is also noticed that the CIT (A) has only rejected the condonation request of the assessee without going into the merits of the issues raised before him. On appreciating the facts available before us, it is noticed that the assessee actually filed an application u/s 154 in the month of May, 2009 and the issues are common which remain un-adjudicated by the AO or the CIT (A) as on date. Considering the fact that the assessee moved an application for rectification, it cannot be inferred that the assessee is not vigilant about his rights. Therefore, we dismissed the allegation of the CIT (A) in this regard. It is also noticed that AO has not so far adjudicated the said rectification and it is also noticed that the assessee is left with pending issues despite they are raised before the AO / CIT (A) through different proceedings. It is also a fact that the assessee is not a company placed with experts advising in matters of litigations. Assessee is only an individual which must be appreciated in matters of this kind. Considering the above factual matrix of the case, we are of the opinion that the assessee cannot be considered as non-vigilant person in the matter of exercising his rights. **Therefore, we find that it is a fit case for condonation of delay**. Thus, the relevant grounds raised by the assessee in the appeal before us are allowed.

6. *Ex consequenti*, since the delay is condoned, we direct the CIT (A) admit the appeal. On finding that the CIT (A) has not adjudicated the issues raised before him, we set aside the issues relating to the merits of the case to the files of the CIT (A) for adjudication of the same in accordance with the provisions of section 250(6) of the Act for passing a speaking order on each of the issues. Accordingly, the grounds raised by the assessee are allowed.

7. In the result, appeal filed by the assessee is allowed.

I.T.A. NO.6980/M/2010 (AY: 2006-2007)

8. This appeal filed by the assessee on 7.10.2010 is against the order of the CIT (A)-8, Mumbai dated 29.7.2010 for the assessment year 2006-07. In this appeal, assessee raised the following grounds which read as under:

> "*1. The CIT (A) erred in upholding the rectification order passed by the AO u/s 154 of the Act, charging tax on long term capital gain @ 20% instead of 10%.*
> *2. The CIT (A) ought to have held that the long term capital gain arising on transfer of bonds / debentures should be taxed @ 10%.*"

9. At the outset, referring to the grounds mentioned above, Ld Counsel for the assessee mentioned that the adjudication of these issues shall have a bearing on the outcome of the issues raised by the assessee in the appeal ITA No.6979/M/2010, which is adjudicated in the above paras of this order. Ld DR has no objection in this regard. Considering the above, we are of the opinion that this appeal should also be set aside to the files of the AO. Accordingly, grounds raised by the assessee in this appeal are set aside.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 1st day of May, 2013.

Sd/-	Sd/-
(SANJAY GARG)	(D. KARUNAKARA RAO)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Date : 01.05.2013
At :Mumbai
Okk

Copy to :
1. *The Appellant.*
2. *The Respondent.*

3. *The CIT (A), Concerned.*
4. *The CIT concerned.*
5. *The DR "D", Bench, ITAT, Mumbai.*
6. *Guard File.*

// True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai