IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1295 OF 2016

M/s B.S.International (Bombay) … Appellant

V/s.

Joint Commissioner of Income-tax-17(3) … Respondent

Mr.K.Gopal with Mr.Tanmay Phadke i/by Mr.Jitendra Singh for the Appellant.

CORAM : AKIL KURESHI AND
SANDEEP K.SHINDE, JJ.
DATE : JANUARY 28, 2019.

P.C.:-

1. Assessee has raised this appeal challenging the judgment of Income Tax Appellate Tribunal ("Tribunal" for short). Following questions are presented for our consideration:

> "(a) Whether the Appellate Tribunal is justified in law dismissing the appeal filed by the Appellant as not admitted on technical ground without appreciating that the appeal could not be filed within limitation period due to circumstances beyond the control of the Appellant?
> (b) Whether the Appellate Tribunal is justified in dismissing the appeal of the Appellant as not admitted without appreciating that the Appellant is prevented by sufficient and reasonable cause for not filing the appeal within the limitation period?

> (c) Whether the Appellate Tribunal is justified in law in dismissing the appeal without following the decision of the Hon'ble Supreme Court?
> (d) Whether the Appellate Tribunal is justified in law in holding that the benefit arising from sale of DEPB shall be excluded while calculating the deduction under Section 80HHC of the Act?"

2. Though several questions are framed by the assessee, issue is single namely whether the Tribunal committed error in dismissing the appeal of the assessee on the ground of delay. The Tribunal noted that the delay in filing appeal was as long as 1625 days. The Tribunal was not convinced about the explanation offered by the assessee for such delay. Thereupon, the assessee has filed this appeal.

3. Having heard the learned counsel for the appellant and having perused the documents on record, we do not find any error in view of the Tribunal. As recorded, the delay is as long as 1625 days. Thus, nearly five years were consumed in filing the appeal before the Tribunal. By way of explanation, the assessee has principally contended before the Tribunal in delay condonation application that when the order was served the deponent, the partner of the assessee-firm was out of town for

some business meetings, therefore, the order was received by the peon. The peon, however, forgot to bring this to the notice of anyone. Subsequently, the deponent of the appellant met with an accident and was not able to attend the office for about two years. Recently, while going through the income tax record he came across the order of Commissioner (Appeals) and consulted his Tax Consultant and filed the appeal on 25th May, 2012. For several reasons, such explanation is not sufficient. Firstly, by merely making a statement that the peon who received the order forgot to inform anyone, the assessee cannot hope to explain such gross inordinate delay. Secondly, the date when he met with an accident, the period during which he was incapacitated due to such accident and such other relevant information is not supplied. There is no material to establish that he met with an accident due to which he could not attend the business of the firm nearly two years as claimed. The explanation is totally inadequate.

4. Counsel for the appellant however submitted that in all other years where such an issue arises, the assessee has filed

appeals. He further submitted that the issue is covered in favour of the assessee by virtue of the judgment of the Supreme Court in case of **Topman Exports Vs. Commissioner of Income Tax**[1]. However, these facts would not permit us to ignore long and inordinate delay caused in filing appeal before the Tribunal. The conduct of the party may permit us to be liberal in condoning delay in a given case. However, merely because in other years appeals came to be filed by a litigant would not imply that he can take unlimited period of time while filing appeal in the later years.

5. In the result, no question of law arises. Appeal is dismissed.

(SANDEEP K.SHINDE,J.) **(AKIL KURESHI,J.)**

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1 (2012) 67 DTR Judgments 185(SC)