आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "एफ" मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI D. MANMOHAN , VICE-PRESIDENT AND B.R.BASKARAN (AM)

सर्वश्री , डी. मन्नमोहन, उपाध्यक्ष एवं बी.आर.बास्करन, लेखा सदस्य

आयकर अपील सं./I.T.A. No.5418 and 5419/Mum/2011

(निर्धारण वर्ष / Assessment Years : 1994-95 and 1996-97)

Shri Vijay V Meghani, Flat No.1, 1st floor, Atur Terraces, 19, Cuffe Parade, Mumbai-400005.	**बनाम**/ Vs.	Dy. Commissioner of Income Tax 23(3), Aayakar Bhavan, M K Road, Mumbai-400020.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./जीआइआर सं./**PAN/GIRNo.:AAFPM4172N**		

अपीलार्थी ओर से / Appellant by :	S/Shri Vipul Joshi and Abhishek Tilak
प्रत्यर्थी की ओर से/Respondent by :	Shri Sambit Mishra

सुनवाई की तारीख / Date of Hearing : 30.7.2014

घोषणा की तारीख /Date of Pronouncement : 20.8.2014

आदेश / O R D E R

Per B.R.BASKARAN, Accountant Member:

Both these appeals filed by the assessee are directed against the two separate orders dated 01-02-2000 passed by Ld CIT(A)-XIX, Mumbai and they relate to the assessment years 1994-95 and 1996-97. In both the years, the assessee is aggrieved by the decision of Ld CIT(A) in rejecting the deduction claimed by the assessee u/s 80-O of the Act.

2. Both the appeals are barred by limitation by 2984 days. We heard the rival contentions on this preliminary issue first. Hence, we proceed to adjudicate the same. In a nutshell, the contention of the Ld A.R was that the assessee was following the advices given by his Chartered Accountant, which ultimately turned

out to be incorrect, and hence the assessee should not suffer for the improper advices given by his Counsel. Further it was submitted that the words "sufficient cause" should be construed liberally and the Courts should adopt a pragmatic approach for advancing substantial justice to the assessee. The Ld A.R further submitted that the improper guidance given the Chartered Accountant was sincerely followed by the assessee and the same would constitute sufficient cause for condoning the delay. The Ld A.R placed his reliance on host of case law in support of the above said submissions. On the contrary, the Ld D.R strongly opposed the submissions made by the Ld A.R and submitted that the explanations furnished by the assessee cannot be considered as "sufficient cause" for condoning the delay.

2.1 Various case law relied upon by the assessee only lay down the principle that the delay, if supported by a sufficient cause, needs to be condoned. Hence, the assessee is required to show that there existed sufficient cause in filing the appeals belatedly. Hence, the condonation of delay would depend upon the reasons so furnished by the assessee to explain the delay. Generally a liberal approach is required to be followed while examining the reasons furnished by the assessee. Hence, the end result of the present question would ultimately depend upon the reasons furnished by the assessee.

3. We proceed to set out the facts surrounding this issue first and also the reasons furnished by the assessee to explain the delay in filing the impugned appeals. Since the reasons furnished by the assessee for both the years under consideration are identical, for the sake of convenience, we extract below the

submissions made by the assessee in the affidavit dated 19-07-2011 filed before us for assessment year 1994-95.

"3) I say that I had received the order dated 01.02.2000 passed by the CIT (A) on 20.03.2003. I say that for the reasons mentioned below, the appeals are being filed on 20.07.2011. Therefore, there is a delay of, two thousand nine hundred and eighty four (2,984) days in filing the appeals before the Tribunal.

4) I say that during the material period, I was employed with BHF Bank AG of Germany, as their Representative in Mumbai. As I was rendering my services from India to a foreign employer I had claimed deduction under section 80-0 of the Act with respect to the salary earned by me from my employer. I say that my claim of deduction under section **80-**0 of the Act was disallowed-by the A.0. for A.Y. 1993-94 and confirmed by the CIT (A). Against the order of the CIT (A), I had preferred an appeal before the Tribunal.

5) I say that all my income tax affairs including the appeal matters were handled by my Chartered Accountant M/s. Rajesh Rajeev and associates from 1997 to November 2006, as they substantially discontinued their tax practice with individuals and started to practice with only corporate client. Thereafter, one chartered accountant Mr. Sunil Chaudhari took over all my taxation affairs. However, in April 2007 Mr. Chaudhari unfortunately expired in a road accident. Thereafter, I appointed M/s. P.A. Dhanbhoora & Co who was handling my taxation work from May 2007 till February 2011. 1 say that as I was in full time employment with the Bank and as I am not well versed with income tax aspects, I have always completely relied upon my chartered accountants for attending to all my tax matters including the regular income tax, assessment and appeal matters and advising me in that regard.

6) I say that the assessing officer ("the A.O.") passed the assessment order for A.Y. 1994-95 and A.Y. 1996-97 on 25.03.1997 and 25.03.1999, respectively, denying the claim u/s 80-0 of the Act. For the A.Y. 1994-95 and 1996 -97, I filed the appeal before the CIT (A) on 09.04.1997 and 29.04.1999, respectively. The CIT (A) dismissed the appeal filed before him for both the years.

7) I say that when my appeal for A.Y.1994-95 and A.Y. 1996 -97 were dismissed by the CIT (A), my then Chartered Accountant M/s. Rajesh Rajeev and Associates advised me not to file further appeals before the Tribunal for both the years to avoid multiplicity of litigation as the issue of sec. 80-O involved in the appeals for AY-1994-95 and 1996-97 was identical to the issue involved in the appeal filed by me before the

Tribunal for AY 1993-94 which was then pending before Tribunal. I was further advised by my chartered accountant that after adjudication of the appeal for AY 1993-94 by the Tribunal, I could move a rectification application before the AO to bring the assessment order in conformity with the decision of the Tribunal.

8). I say that the Hon'ble Tribunal, vide order dated 29.6.2006, restored the matter back to the file of the AO to examine the issue of allowability of deduction under section 80-O of the Act. Thereafter, the AO passed an order on 19.2.2009 allowing my claim of deduction under section 80-O of the Act.

9) I say that the order giving effect to the Tribunal's order was received by me on somewhere in May 2009. Immediately after receiving the order of the A.O., I preferred rectification application before the A.O. to rectify the order for A.Y. 1994-95 and A.Y. 1996-97 on 15.07.2009. (Annexed hereto and marked as **Annexure -'A'** is the copy of the rectification application dated 15.07.2009)

10) I say that after continuous follow up with the department and also writing letter under the Right to Information Act, finally, vide order dated 14.05.2010, the A.0. rejected the rectification application. After receipt of the order, I was following up continuously with my Chartered accountant M/s. Rajesh Rajeev and Associates, who were handling my appeal for A.Y. 1993-94 and who had advised me prefer rectification application before the A.O., for further course of action. On 18.04.2011, I received a letter from M/s. Rajesh Rajeev and Associates where in they mentioned that the Department was not correct in rejecting my rectification application and advised me to follow up the matter with the department. (Annexed hereto and marked as **Annexure - 'B'** is the copy of the letter dated 15.04.2011 received from M/s. Rajesh Rajeev & Associates Chartered Accountant)

11) I say that, thereafter, I consulted another chartered accountant, Mr. Yatin K. Desai, who, after going through the entire history of my case, advised me to file appeals before the Tribunal against the orders of the CIT(A), along with application for condonation of delay.

12) I say that, it was under these facts and circumstances, which were beyond my control, that the appeals could not be filed before the Hon'ble Tribunal were not filed within the limitation period.

13) I say that I am a law abiding citizen and nowhere in past I was guilty of any negligence or latches for any of my income tax obligations.

I say that all that has been stated above is true to the best of my knowledge and belief

Solemnly affirmed on this 19th day of July, 2011"

4. In support of the averments made in the affidavit, the assessee has filed a letter dated 15-04-2011 furnished by M/s Rajesh Rajeev & Associates, Chartered Accountants and also an affidavit dated 22-08-2013 furnished by one of the partners of the above said CA firm. For the sake of convenience, we extract below the contents of the said affidavit.

> "4. That for Assessment Years 1991-92 and 1993-94, the Appellant had claimed deduction under section 80-0 for the salary income earned by him. However, the claim of the Appellant was disallowed by the Assessing Officer ["A.O."] for the Assessment Year 1993-94. The Appeals were also dismissed by the Commissioner of Income-tax (Appeals). Against the order of the CIT(A), the Appellant filed appeals before the Hon'ble Income-tax Appellate Tribunal ["ITAT"] being I.T.A. nos. 4398/Mun/1997 and 4399/Mum/1997.
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> 5. I say that while the appeal was pending before ITAT for Assessment Year 1993-94, the A.O. as well as CIT (A) disallowed the claim of the Appellant under section 80-0 for A.Y. 1994-95 and A.Y.1996-97 also.
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> 6. I say that when the Appellant approached me to seek my advice on the further course of action, I advised him that since he was an individual, having limited resources to individually pursue appeals for each year in the ITAT and since the facts in all the subsequent years were identical to the facts in Assessment Year 1993-94 which were already in appeal before ITAT, he need not go for repeated appeals for Assessment Years 1994-95 and 1996-97 and **instead file a rectification or review application before the A.O,** once the issue is settled by the ITAT and the order giving effect to ITAT order is passed for A.Y. 1991-92 and 1993-94.
>
> 7. I say that it was under my advice that the Appellant did not file appeals within the prescribed time-limit of 60 days before ITAT for Assessment Years 1994-95 and 1996-97, but rectification application.
>
> I say that all that has been mentioned above is true to the best of my knowledge and belief.
>
> Solemnly affirmed on this 22nd day of Aug 2013
>
> Sd.
>
> Deponent"

5. We shall cull out the facts emanating from the explanations furnished by the assessee.

(a) The assessee claimed deduction u/s 80-O in AY 1993-94 in the return of income filed by him on 10-11-1993. The AO rejected the said claim, vide his order dated 19-10-95 and the Ld CIT(A), vide his order dated 26.5.97, confirmed the said disallowance. The assessee filed appeal before ITAT and the Tribunal, vide its order dated 29-05-06, restored the matter to the file of the AO. In the set aside proceeding, the AO allowed the deduction u/s 80-O. (These details are taken from the fact sheet furnished by Ld A.R).

(b) For assessment year 1994-95, the assessee filed his return of income on 31-08-1994. The AO allowed the claim for deduction u/s 80-O in the assessment order passed on 25-03-1997. However, the Ld CIT(A), by giving enhancement notice, disallowed the said claim in the order dated 01-02-2000 passed by him. In assessment year 1996-97, the AO himself rejected the claim for deduction u/s 80-O and the same was confirmed by Ld CIT(A), vide his order dated 01-02-2000. **According to the assessee, the appellate order dated 01.02.2000 was received by him only on 20-03-2003,** i.e., after expiry of about three years.

(c) The appeal filed before Tribunal for AY 1993-94 was pending at the time the Ld CIT(A) passed orders for AY 1994-95 and 1996-97.

(d) According to the assessee, his Chartered Accountants M/s Rajesh Rajeev & Associates had advised him not to file further appeals before the Tribunal for AY 1994-95 and 1996-97, since the appeal filed by him for AY 1993-94 was pending at that point of time before the Tribunal. It is stated further that the assessee has been advised by the above said CA firm that he can get relief by filing rectification petition for both the years before the AO u/s 154 of the Act, after the receipt of order from ITAT for AY 1993-94.

(e) The Tribunal disposed of the appeal relating to AY 1993-94 on 29-06-2006 by restoring the issue relating to the deduction claimed u/s 80-O of the Act to the file of the AO. The assessing officer subsequently passed the consequential order in May, 2009, wherein he allowed the claim of the assessee.

(f) Subsequently, on 15.07.2009, the assessee filed rectification petition before the AO for both the years under consideration. The assessing officer rejected the petitions, vide his order dated 14.05.2010.

(g) Thereafter, he again consulted M/s Rajesh Rajeev and Associates, who gave a letter dated 15-04-2011 stating that the approach of the department was not correct.

(h) Thereafter he consulted Mr. Yatin K Desai, who advised him to file appeals before ITAT and hence the appeals were filed on 20-07-2011.

6. Before proceeding further, we feel it appropriate to refer to some of the judicial pronouncements made on the issue of condonation of delay. The Hon'ble Calcutta High Court in the case of CIT Vs. Metal Distributors Ltd (1988) 172 ITR 356 has held as under:-

> "that in the absence of proper explanation for the delay in presenting for leave to appeal to the Hon'ble Supreme Court, the delay could not be condoned."

The Hon'ble Rajasthan High Court in the case of State of Rajasthan Vs. Chaudhury Construction AIR 1988 Raj. 123 have held as under:

> "that in the absence of material particulars as to why delay had been caused, the delay could not be condoned by merely accepting the explanation that the delay occurred in the Government Office".

The Hon'ble Calcutta High Court in the case of Soorajamull Nagarmal (supra) has held that:-

> "The cause for delay in making the application which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of section 5 of Limitation Act. Where no negligence nor inaction nor want of bona fides can be imputed to the applicant, a liberal construction of the section has to be made in order to advance substantial justice. **The applicant has to show sufficient cause for not filing the application on the last day of the limitation and must explain the delay made thereafter day-by-day till the actual date of filing of the application."**

In one another case of Ashutosh Bhadra Vs. Jatinder Mohan Seal AIR 1954 Cal.238, Hon'ble Calcutta High Court has held as under:-

> "The existence of "sufficient cause" is a condition precedent for the exercise of discretion under section 5 of the Indian Limitation Act. "sufficient cause" must mean a cause beyond the control of the party invoking the aid of the section. A cause for delay which the party could have avoided by the exercise of the care and attention cannot be a sufficient cause. In other words, the Court must be able to say, having regard to the facts and circumstances of the case that the delay was reasonable. **A cause arising from the negligence of the party cannot be a "sufficient cause" within the meaning of section 5**".

7. Now we shall examine the explanations/reasons furnished by the assessee to find out as to whether there was sufficient cause for him to file these appeals belatedly.

(a) We have noted earlier that the Tribunal has passed a consolidated order for AY 1991-92 and 1993-94. It is pertinent to note that the Tribunal has considered a common issue relating to valuation of perquisites in both the years. Hence, the assessee is expected to be aware of the fact that appeals before the Tribunal have to be filed for each of the assessment year separately, even if the disputed issues are identical in nature. In the present cases, when the Ld CIT(A) passed the orders, the assessee was prosecuting the appeals relating to the assessment years 1991-92 and 1993-94 before the Tribunal by engaging one of the eminent and leading counsels Shri S.E. Dastur assisted by Shri Nitesh Joshi to argue his case before Tribunal.

(b) From the explanations furnished by the assessee, it is noticed that the assessee has availed services from more than one professional, viz.,

(a) Shri S.E. Dastur, Advocate
(b) Shri Nitesh Joshi, Advocate
(c) M/s Rajesh Rajeev and Associates (From 1997 to Nov.2006)
(d) Shri Sunil Chaudhari, Chartered Accountant (Nov. 2006 to April 2007)
(e) M/s P.A. Dhanbhoora & Co., Chartered Accountants (May 2007 to February, 2011).
(f) Ms. K. Bijlani, C.A., from M/s Ashok Rao & Co., Chartered Accountants - Before AO in AY 1994-95.
(g) Mrs. Rasneem Varavalla, CA from M/s Ashok Rao & Co., Chartered Accountants – Before AO in AY 1996-97.
(h) Shri Ashish Srivastava, CA before Ld CIT(A) in AY 1994-95 and 1996-97.
(i) Mr. Yatin K Desai, Chartered Accountant (who advised him to file appeals before ITAT).

Despite having connections with so many professionals, yet the assessee claims to have followed the advice given by M/s Rajesh Rajeev and Associates, Chartered Accountants. When a person faces a problem, it is quite a common human behavior to consult other experts. Hence, it is not believable that the assessee did not discuss about the appellate proceedings with any other professional.

(c) Even if, for a moment, it is presumed that the assessee was sincerely adhering to the advice given by M/s Rajesh Rajeev and Associates, Chartered Accountant, **yet it is not understandable as to how the above said CA firm or the assessee could be sure that**

they will win in the appeal filed before the Tribunal for AY 1991-92 and 1993-94. In fact, it is seen that the Tribunal has only remitted the matter back to the file of the AO. When the outcome of the appeals filed before the Tribunal is not known and further, it is common knowledge of everybody that outcome of an appeal may go either way, how a prudent man or for that matter a qualified professional Chartered Accountant could be rest assured that the appeal would be decided in assessee's favour. Under the above discussed circumstances, in our view, a prudent man could not have kept idle accepting the advice given by the above said C.A firm alone, since the assessee is having acquaintance with many professionals.

(d) In the letter dated 15-04-2011 and also in the affidavit dated 22-08-2013 filed by Shri CA Chandrasekar of M/s Rajesh Rajeev & Associates, Chartered Accountants, it is stated that the assessee, being an individual, is having limited resources to individually pursue appeals for each year in the ITAT. However, we notice from the order passed by Ld CIT(A) for AY 1994-95, the assessee has spent Rs.6,024 in Willingdon Club, Rs.34,000/- in Belvedere Club at Oberoi Hotel. Further, we notice that the assessee has declared salary income of about Rs.14.50 lakhs and Rs.23.00 lakhs respectively for AY 1994-95 and AY 1996-97. There should not any controversy that, with the above said salary level in those days, the assessee could be considered as highly paid employee. These fact does not support the statement made by the C.A firm.

(e) We have noticed that the assessee is required to show sufficient cause for not filing the application on the last day of the limitation and must explain the delay made thereafter day-by-day till the actual date of filing of the application. However, the assessee has failed to show any reason for the delay occurred in between periods, viz.,

(i) Order giving effect to Tribunal order was passed on 19-02-2009 and claimed to have been received in May 2009, but the assessee filed rectification petitions only on 15.07.2009. (About 2 months gap)

(ii) The AO has rejected the rectification petitions on 14.05.2010. But the assessee has consulted and received letter from M/s Rajesh Rajeev Associates, Chartered Accountants only on 15.04.2011. (About 11 months gap)

(iii) Thereafter, he has consulted another C.A and the appeal was finally filed on 20-07-2011 (About 3 months gap).

(iv) The Ld CIT(A) passed the orders for these years on 01-02-2000. The Tribunal passed order for AY 1993-94 in June, 2006. As stated earlier, the ITAT had only restored the matter to the file of the AO without deciding the issue. Even at that point of time also, it is unbelievable that it did not occur in the mind of professional CA

or the assessee that they should file appeals before the Tribunal. If the assessee had filed appeals in June, 2006 itself, there might have been some merit in his contentions.

8. At this juncture, we feel it necessary to highlight the lethargic approach adopted by the revenue in the instant cases. In these cases, the revenue is aware of the fact that these appeals are delayed by 2984 days (more than 8 years) and such delay cannot be considered as normal. From the fact sheet filed by the assessee, we notice that the assessee has claimed to have received the orders dated 01-02-2000 passed by Ld CIT(A) only during March, 2003, i.e., after a gap of more than three years. We notice that the assessee has computed the delay period of more than 8 years from March, 2003 only, i.e., from the date of receipt of first appellate orders as claimed by the assessee. If we add the delay of three years to the existing period of delay, the period of delay would be increased by three more years. Thus, the assessee has simply put the responsibility upon the revenue for a delay of three years. When these kinds of averments are made, it is normally expected that the revenue should verify the appellate/assessment records to find out the veracity of such explanations. It is unfortunate that the revenue did not care to verify the records to find out the veracity of the said submissions. Further, the revenue has also not chosen to counter the averment made in the affidavit by furnishing any other counter affidavit / explanations. The Department Representatives, posted to argue the case of the revenue, should be aware that they are "Officers of the Court" and it is their primary duty to assist the bench to arrive at a fair and reasonable conclusion on the issues contended by either of the parties. It is

unfortunate that we did not get any kind of assistance from the Ld D.R in this regard.

9. We have noticed that the assessee herein has claimed that he was following the advices given by his C.A firm. Hence, it is imperative to examine the said claim on the basis of facts available on record. In the process we shall also discuss about the veracity of the affidavit furnished by the Chartered Accountant, i.e., one of the partners of M/s Rajesh Rajeev & Associates, Chartered Accountants, who claimed to have given advice to the assessee to file rectification petitions. We are aware that the Chartered Accountancy profession commands high respect and value with one and all, because of their core expertise and knowledge. Their domain expertise and practical approach adopted by them to address the problems enable them to give near perfect advice in a given situation and hence tax payers and tax gatherers repose confidence in them. These kind of domain expertise could be achieved by a C.A due to strict training methodologies adopted by and also high level of standards maintained by the Institute of Chartered Accountants of India (ICAI), its vast and versatile curriculum, tough examination pattern, continuous updating of curriculum etc.. Most of all, the practical on-site training obtained by the students from a practicing Chartered Accountant, that too during the period of study itself, makes the C.A course a unique one. The cumulative effect of these methodologies makes the students a perfect Chartered Accountant having high caliber, ability, high standards etc., and hence they are enabled to set up their own practice from day one itself. Though the Chartered Accountants are having domain expertise in accountancy and auditing areas, yet the training they undergo as well as the curriculum of C.A course makes them a best tax professional also.

Another important feature is that the ICAI ensures that the Chartered Accountants are updating their knowledge with current topics and also current developments that take place and the same is sought to be achieved by the ICAI through the Continuing Professional Education (CPE) programs.

9.1 Under the Income tax Act, the income of each year is assessed separately and hence the assessee is also required to file the return of income separately for each year. The assessment order is also passed separately for each assessment year. Hence, the appeal, if any, is required to be filed separately for each year. In the instant case, the assessee has also filed separate appeals before Ld CIT(A) against the assessment orders passed for AY 1994-95 and 1996-97. Under the settled principles of law discussed above, it is inconceivable that a C.A would have advised the assessee to wait for outcome of a past appeal to decide about the course of action to be taken for the years under consideration. We shall discuss about the same in a detailed manner in the ensuing paragraphs.

9.2 Everybody is aware that various Statutes generally prescribe time limits for complying with various requirements of law and also for completing various statutory functions. For example, the Income tax Act prescribes time limits for filing return of income and also for completing the assessments. Thus, a prudent person should be aware that non-compliance of the provisions within the prescribed time limit may land him in trouble.

9.3 The rectification petitions claimed to have been suggested by M/s Rajesh Rajeev & Associates, Chartered Accountants are required to be filed u/s 154 of

the Act. Under the provisions of sec. 154 of the Act, the rectification petitions are required to be filed within four years from the end of financial year in which the order sought to be amended was passed. In the instant cases, the assessment order for AY 1994-95 was passed on 27-03-1997 and the assessment order for AY 1996-97 was passed on 25-03-1999. Hence the four years time limit, prescribed u/s 154 of the Act, would expire on 31.3.2001 and 31.3.2003 respectively for AY 1994-95 and 1996-97. It would not be difficult for a Chartered Accountant to determine the above said time limit, since the Chartered Accountants are considered to be experts in handling the figures, i.e., in computations and calculations. According to the assessee, he has received the appellate orders passed by Ld CIT(A) only in March, 2003. Hence, at that point of time, the time limit for filing rectification petition for AY 1994-95 had already expired and the time limit for AY 1996-97 was due to expire on 31.3.2003. Hence, it is hard to believe that the above said C.A firm would have given such an advice to the assessee to file rectification petitions, that too, after the receipt of order of the Tribunal for an earlier year, viz., for AY 1993-94. At that point of time, the appeals relating to AY 1991-92 and 1993-94 were pending before the Tribunal and both the C.A firm and assessee are not aware as to when the said appeals will be taken up by the Tribunal for disposal as well as its outcome. Under these set of facts, it is not understandable as to how a C.A firm could have given such an advice.

9.4 **Another important point to be noted here is that the assessing officer has, in fact, allowed the claim for deduction u/s 80-O in AY 1994-95 and it is the Ld CIT(A), who has disallowed the said claim.**

Under these set of facts, the question of rectification of the assessment order for AY 1994-95 would not arise at all.

9.5 Further, under the principle of 'Doctrine of Merger', an assessment order would merge with the order of Ld CIT(A) in respect of the issues decided by the first appellate authority and hence the question of rectification of assessment orders of both the years under consideration on the impugned issues, after receipt of first appellate orders, would not arise at all. The Chartered Accountants are generally aware of these principles. In this back ground, in our view, the above said C.A. firm would have given the letter as well as the affidavit only to accommodate the assessee herein. We would like to mention here that we have come to such a conclusion, since a qualified C.A. firm would not commit such kind of silly mistakes while giving expert professional advice. If the C.A. firm has so accommodated the assessee, without even realising that it is detrimental to its reputation, then the conduct of the C.A. firm needs to be condemned strongly. In that case, we are of the view that the above said conduct of the C.A. firm not only denigrates its name/reputation, but also badly affects the high standards, confidence, quality, prestige, reputation etc. enjoyed by the C.A. profession.

9.6 However, if it is considered for a moment that the above said C.A firm has really given such advice to the assessee herein and accordingly it has furnished the letter and affidavit, then, in our view, it may be showing signs of deteriorating standards with some of the Chartered Accountants in profession, which needs to be stopped on war footing by the ICAI. We have already noticed that the assessee is having connection with many tax professionals and,

in all probabilities, the assessee might have had consultation with any one or more of them on the impugned problem. It is inconceivable that all the Chartered Accountants, whom the assessee might have had consultation or availed services, would have concurred with the view expressed by the above said C.A firm. If it is presumed for a moment that all the C.A.s have concurred with the said view, then it only shows that the C.A profession is losing its grip over the Income tax matters, which is another cause of concern for ICAI. The self study model coupled with 'on-site articled clerk training' embedded in the Chartered Accountancy course aims to achieve high quality education and training through undergoing practical training, inculcating the habit of thinking, self introspection, application of mind, analytical ability etc. and they enable the C.A students to have strong grip over the subjects and also to attain expertise in them. The commendable feature of the C.A course is that, as stated earlier, the C.A students are trained by the practicing Chartered Accountants during their articled clerk training program. Thus, the methodology adopted by the ICAI enabled the C.A. students to become a thorough professional with versatile knowledge and innovative mind. We notice that, in the recent past, the methodology of self study is given a go-by by some of the C.A students and they have started depending more and more on the Commercial Coaching Centers, who undertake coaching of various subjects in the class room model. We notice that the ICAI does not appear to have taken steps to contain mushrooming growth of such coaching institutes, which indulge in manufacturing of Chartered Accountants through class room model, which may ultimately have undesirable effect on the quality of Chartered Accountants, since the habit of thinking, introspection, application of mind is replaced by spoonfeeding, which kind of

teaching discourages independent thinking. There should not be any controversy on the fact that the Chartered Accountants, till date, have occupied pioneer position vis-à-vis their counterparts in other parts of the World. They also contribute a lot to the building, sustenance and growth of our National economy. Any compromise on the quality of Chartered Accountants would not only affect our Country very badly, but is also expected to endanger the pioneer position enjoyed by the Indian C.A fraternity vis-à-vis their counter parts in other parts of the world. In our view, the ICAI should seriously take note of these alarming practices slowly emerging in our Country and should take appropriate corrective steps, lest the confidence reposed in C.A.s by the public should get diluted.

10. In the instant case, we have noticed that the C.A. firm cited above has given an affidavit to the effect that it has given advice to the assessee to wait for the outcome of the appeal filed before the Tribunal and then to file rectification petitions. In paragraph 6 of the affidavit, the C.A. firm has stated that they have advised the assessee herein that he could **file a rectification or review application** before the AO, once the issue is settled by the ITAT. We notice that the expressions "rectification" and "review" appear to have been used in the affidavit with the understanding that they are synonyms to each other. Under sec. 154 of the Act, mistakes apparent from record alone can be rectified and the question of "review" does not come within the ambit of that section. Further, we have already noticed that the question of filing rectification petition for assessment year 1996-97 does not arise at all, since the AO had actually allowed the deduction u/s 80-O of the Act in that year and it is the Ld CIT(A) who had

withdrawn the said deduction. Thus, it is seen that the advice claimed to have been given by the C.A firm has been given without analysing the facts prevailing in the instant case and also without clear understanding of the provisions of the Act and their implications. We have also noticed that a C.A firm could not give such kind of advice, since it cannot forecast the outcome of an appeal filed before the Tribunal. We have already noticed that the CPE programs have been designed by ICAI with the noble objective of enlightening the Chartered Accountants with current topics, current developments and such programs are also aimed to continuous updating or refreshing of the knowledge of Chartered Accountants. The advice claimed to have been given by M/s Rajesh Rajeev Associates, Chartered Accountants, if considered to have been really given, would create doubt about the efficacy of the CPE programmes, since such kind of advices is not expected from a Professional. Further these kind of advices claimed to have been given by a C.A firm clearly give signals that the CPE programmes might have failed to achieve the desired objectives with some of the Chartered Accountants. It is hightime that the ICAI should take note of these practicalities and should take corrective steps in order to maintain/restore the high standards and quality expected from a C.A. professional. We have also expressed the view that the above said C.A firm might have given the affidavit only to accommodate the assessee, which conduct is also not expected from a Professional. If it is considered that the C.A firm has colluded with the assessee for giving such kind of affidavit, then it only warrants disciplinary action against them. Even, if it is considered that the said C.A. firm has really given such advices, then also it may require disciplinary action against them for giving such kind of advices, without proper verification of facts and without proper

consideration of law. In our view, strict actions and fast disposal of disciplinary proceedings would not only instill discipline among the C.A fraternity, but also help curtail these kind of undesired practices adopted by some of the Chartered Accountants

11. Since the assessee as well as the above said C.A. firm has given affidavits to substantiate their explanation, we feel it appropriate to refer to the decision rendered by Hon'ble Allahabad High Court in the case of Sri Krishna Vs. CIT (142 ITR 618)(All) with regard to the affidavits furnished in a proceeding. In the above said case, the assessee therein filed an affidavit stating that he did not receive demand notices from the Income tax department. However, since the relevant records were not available with the department, the Income tax officer was not able to show that the demand notices were served upon the assessee. The Hon'ble High Court examined the sequence of events and came to the conclusion that the affidavit given by the assessee could not relied upon. The relevant observations made by Hon'ble Allahabad High Court in the above cited case are extracted below, for the sake of convenience:-

> "The fact that the Department has not been able to make a definite assertion that the notices of demand were served on the assessee cannot help the assessee or the petitioners in this case. The failure of the respondents to make a positive assertion is not sufficient in view of the peculiar facts of the instant case, to lead to the conclusion that the assertion made by the assessee is true and worthy of reliance. **It is neither a rule of prudence nor a rule of law that the statements made in an affidavit which remains uncontroverted, must invariably be accepted as true and reliable. Ordinarily, in the absence of denial, the statements may be accepted as true but if there are circumstances which suggest that the statements on affidavit should not be accepted as true, the absence of denial by the other side, would not by itself be sufficient to clothe the statements on affidavit with truthfulness and reliability.** In view of the special facts and circumstances of this

> case, we are not inclined to accept the statement of the Karta made on oath in the affidavit that the notices of demand in respect of the assessment years in question were not served on him before the commencement of recovery proceedings. As said earlier, this statement is clearly an afterthought and was made when the deponent became sure that the Department is handicapped by the non-availability of the relevant records. The normal and natural course for the ITO is to send the assessment order along with notice of demand, and tender for deposit of the amount due in a treasury or bank, to the assessee. This course must have been followed in the instant case as well. There is no reason for us to think that the income-tax office would have departed from this well-known and well-established practice of the Department when an order of assessment was made and it was found that certain amount of income-tax was due from the assessee."

In the instant case, we have observed earlier that a C.A. firm could not have given such kind of advices. Hence, we are constrained to reject the affidavit given by the C.A firm. The affidavit given by the assessee is also liable to be rejected since it gains strength only from the affidavit given by the C.A. firm.

12. In the instant cases, the discussions made by us in the earlier paragraphs would show that the assessee has failed to show that there was sufficient cause for the substantial delay occurred in filing these appeals. we have particularly noticed that

(a) an experienced C.A firm could not have given such kind of wrong/ absurd advice on the facts prevailing in the instant case.

(b) even if it is considered that his C.A firm has given such an advice, it is not believable that a prudent man would not have cross verified the same or applied his mind over it.

(c) the conduct of the assessee is beyond the comprehension of human conduct and probabilities.

(d) the assessee has failed to show the reasons for entire period of delay, i.e., no reason has been for the delay that occurred in between periods.

13. In view of the discussions made supra, we are of the view that no credence could be given to the letter and affidavit furnished by the Chartered Accountant and hence they will not come to the help of the assessee. We have already held that the affidavit given by the assessee is also liable to be rejected. Under the facts and circumstances discussed supra, we are constrained to reject the request put forth by the assessee to condone the delay in filing these two appeals. Accordingly we are not inclined to admit both the appeals filed by the assessee. We order accordingly.

14. In the result, both the appeals filed by the assessee are dismissed in limine.

The above order was pronounced in the open court on 20th Aug, 2014.

घोषणा खुले न्यायालय में दिनांकः 20th Aug, 2014 को की गई ।

Sd sd

(डी. मन्नमोहन/**D. MANMOHAN**) (बी.आर. बास्करन,/ **B.R. BASKARAN**)

उपाध्यक्ष /**VICE- PRESIDENT** लेखा सदस्य/**ACCOUNTANT MEMBER**

मुंबई Mumbai: Aug,2014.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai concerned
6. The Institute of Chartered Accounts of India, ICAI Bhawan Indraprastha Marg,Post Box No. 7100, NEW DELHI - 110 002
7. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai