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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA Nos. 816/2011

CIT ..... Appellant  
Through Ms. Suruchi Aggarwal,  
Advocate.

versus

ASOKA MARKETING LTD. .... Respondent  
Through Mr. Prakash Kumar, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE R.V.EASWAR**

% **ORDER**  
**23.01.2012**

**CM No. 11975/2011**

This is an application by the Revenue for condonation of delay of 2070 days in filing the appeal. The impugned common order was passed on 25<sup>th</sup> April, 2005 by the Income Tax Appellate Tribunal, Kolkata (ITAT, Kolkata) in ITA No. 2176/Kol/2004 whereby the ITAT, Kolkata deleted an addition of Rs. 31,95,494/- made by the Assessing Officer on account of unexplained investment in work-in-progress of a building being a business venture. The Assessing Officer had relied on the report



of the District Valuation Officer (DVO). The ITAT, Kolkata held that reliance placed on the report by the Assessing Officer was misplaced as the DVO did not apply the local P.W.D. rates in Calcutta while estimating the cost of construction.

2. The impugned order relates to the assessment year 1975-76.
3. The impugned order was received in the office of CIT-III, Kolkata on 24<sup>th</sup> May, 2005 and the limitation for filing of the appeal under Section 260A of the Income Tax Act, 1961 ('Act', for short) expired on 21<sup>st</sup> September, 2005.
4. In the application seeking condonation of delay it is stated that after the impugned order was received by the ITO, Ward 7(1), Kolkata, the file was processed by various officers at Kolkata and one Mr. T.K. Hazra, Advocate was engaged to file the appeal on 13<sup>th</sup> September, 2005.
5. It may be relevant here to reproduce paragraphs (l) to (p) of ~~in~~ the application:

"l) On 13.09.2005, Ministry of Law engaged Mr. T.K. Hazra, Advocate for drafting the appeal and handed over the necessary folder.

m) That despite reminders, Mr. Hazra returned the judicial folder only on 18.01.2011 alongwith all documents without drafting Memorandum of Appeal, Stay



Petition and Application u/s 5 of the Limitation Act.

(n) That Mr. Hazra also sent a letter-dated 24.01.2011 explaining the reasons for not drafting the appeal. The copies of the letters dated 18.01.2011 and 24.01.2011 shall be produced at the time of hearing, if required by the Hon'ble Court.

(o) That on 10.02.2011, Ministry of Law again handed over the entire judicial folder to another Advocate to draft Appeal, Stay Petition and Section 5 Application.

(p) That on 17.03.2011, the judicial folder alongwith drafted appeal etc was received by ITO (Tech)-III, Kolkata and sent to the ITO Ward-7(1) Kolkata on 21.03.2011."

6. We may also notice here that an order under Section 127 of the Act was passed on 17<sup>th</sup> March, 2010 transferring jurisdiction in the case of respondent-Ashoka Marketing Limited to Deputy Commissioner of Income Tax, Circle 2(1). However, copy of the said order under Section 127 has not been filed on record.

7. On the last date of hearing, counsel for the Revenue-applicant had filed before us a copy of the letter dated 21<sup>st</sup> September, 2011 written by Assistant Commissioner of Income Tax, Circle 2(1), New Delhi to the Sr. Standing Counsel of the Revenue. Along with this letter, copy of the letter dated 18<sup>th</sup> January, 2011 written by Mr. T.K. Hazra, Advocate to the Superintendent (Legal), Ministry of Law and Justice, Department

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of Legal Affairs, Kolkata has been enclosed. By this letter, thirty files were returned by the said counsel to the Superintendent (Legal).

8. The applicant-Revenue has not been able to explain and justify the delay between 13<sup>th</sup> September, 2005 and 18<sup>th</sup> January, 2011. It was the responsibility of the Revenue to follow up the matter with the concerned counsel and ensure that the appeal was filed. No correspondence with the counsel, during the period 13<sup>th</sup> September 2005 to 18<sup>th</sup> January 2011 has been placed on record. The reasons/ grounds mentioned in the application do not explain and state the reason for this delay between 13<sup>th</sup> September, 2005 to 18<sup>th</sup> January, 2011. After the order under Section 127 was passed on 17<sup>th</sup> March, 2010, the Assessing Officer, Delhi should have also taken steps to ensure that the appeal was filed or to get hold of the details in case appeal had not been preferred. The application for condonation of delay is silent on these aspects.

9. In view of the above position, we are not inclined to accept the explanation and reason given by the Revenue for condonation of delay of over 2000 days. The explanation cannot be treated as sufficient to justify the said delay. The application for condonation of delay is dismissed. Resultantly,

(10)



the appeal is also dismissed. No costs.

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SANJIV KHANNA, J.

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R.V. EASWAR, J.

JANUARY 23, 2012/VKR

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