

## **Delay in filing of appeal due to failure of AO to hand over his charge to successor is condonable**

**Summary – The High Court of Gujarat in a recent case of Gruh Finance Ltd., (the Assessee) held that where delay in filing appeal by Revenue took place due to unusual circumstances of failure on part of concerned Assessing Officer to handover charge to successor officer, delay should be condoned.**

### **Facts**

- The revenue filed an appeal before the Tribunal challenging the order of the Commissioner (Appeals). However, there was delay of 2005 days in filing such appeal.
- It was submitted that departments appeal was not filed due to oversight innocuously by the concerned Assessing Officer taking over the charge during the period when the filing appeal was getting barred by time. As the omission had occurred inadvertently, it was requested to kindly condone the same and also taking to the tax effect involved in this case of Rs. 7.71 crores.
- The Tribunal however, was of the opinion that there was inordinate delay of over five years. The reason given by the revenue was not sufficient or satisfactory. Mere failure on part of the concerned officer to handover the charge to the successor officer would not be a ground to ignore such inordinate delay. It was this order which the Revenue had challenged in this tax appeal.

### **Held**

- In the facts of the present case, explanation by the revenue is not of mere tossing file from one table to another or from one authority to another. The explanation is somewhat unusual, nevertheless, appears to be genuine. On account of unusual circumstances, where the person in charge proceeded on leave handing over the charge to another incumbent. No sooner did he resume duties after the leave period, he was transferred. The incumbent to whom he had given additional charge was also under order of transfer. Both these officers thus left on the same day. The charge was handed over to the new incumbent. In the process, one file for filing appeal before the Tribunal was lost sight of. It is not even seriously disputed that the revenue always desired to prefer appeal for the year 2004-05 also. The fact that despite instructions of the Commissioner, the said appeal was not filed came to the light of the department only when tax appeal of the same assessee for other year came up for hearing before the Tribunal upon which after making inquiries and finding out that due to such lapse, the appeal was not filed, steps were taken to do so with condonation of delay application.
- In the result, the question is answered in favour of the revenue, judgment of the Tribunal is reversed. Delay in filing the tax appeal by the revenue is condoned. Tax Appeal of the revenue is restored to file which shall be heard on merits. Appellant shall pay cost of Rs. 25,000 to the respondent which shall be done latest.