

## **HC condoned delay as appeal was filed belatedly due to resignation of CEO who only had power to file appeals**

**Summary – The High Court of Madras in a recent case of Elnet Technologies Ltd., (the Assessee) held that where assessee-company filed an appeal before Commissioner (Appeals) after a delay of 231 days due to reason that Director and Chief Executive Officer (DCEO) of assessee who had to take a decision to file an appeal had resigned and subsequently a new DCEO was appointed who after considering issue, took up matter before Board of Directors and then a decision was taken to file appeal, impugned delay was to be condoned**

### **Facts**

- The assessee joint venture company was promoted by the Electronic Corporation of Tamil Nadu (ELCOT) - an undertaking of the Government of Tamil Nadu. The assessee filed its return of income. The assessee's case was selected for scrutiny. While completing the scrutiny assessment under section 143(3), the Assessing Officer treated the income from letting out of the modules as income from other sources and denied the set off of carry forward losses.
- Against the order of assessment under section 143(3), the appeal to the Commissioner (Appeals) was filed with a delay of 231 days. The assessee filed an affidavit explaining the reasons for the delay that as soon as the assessment order was received, it was placed before the DCEO, who was an IAS Officer nominated by the Government and the said DCEO directed the matter to be placed before the Board of Directors for a decision to be taken for filing an appeal. Subsequently, the said DCEO, resigned as a result of which, a decision could not be taken. Further the post of DCEO remained vacant and subsequently, a new DCEO was appointed by the Government. The new DCEO, after considering the issue, took up the matter before the Board of Directors and a decision was taken to file the appeal. However, the Commissioner (Appeals) dismissed the appeal stating that it was not a fit case for condoning the inordinate delay of 231 days.
- On further appeal, the Tribunal, confirmed the order passed by the Commissioner (Appeals).
- On appeal to the High Court:

### **Held**

- One has perused the affidavit dated 19-12-2001 filed by the DCEO of the assessee before the Commissioner (Appeals) wherein it has been stated that as soon as the assessment order was received, it was placed before the DCEO, who was an IAS Officer nominated by the Government and the said DCEO directed the matter to be placed before the Board of Directors for a decision to be taken for filing an appeal. Subsequently, the IAS Officer, who was the then DCEO, resigned with effect from 20-4-2000, as a result of which, a decision could not be taken. The assessee filed a copy of the resignation letter before the Commissioner (Appeals) in the form of annexure. The assessee further stated that the post of DCEO remained vacant till 15-11-2000 and subsequently, a new DCEO

was appointed by the Government with effect from 15-11-2000. A copy of Form No.32 filed by the company before the Registrar of Companies along with an affidavit was also annexed. The new DCEO, after considering the issue, took up the matter before the Board of Directors and a decision was taken to file the appeal for the appellant. Therefore, the appellant prayed that the delay might be condoned.

- However, the Commissioner (Appeals) was of the view that the explanation offered cannot be said to be sufficient cause for condoning the delay of 231 days. He opined that in case the DCEO was not available, there were other Directors of the assessee, who could have taken a decision to file the appeal within time.
- On further appeal by the assessee, the Tribunal, in the impugned order, agreed with the view expressed by the Commissioner (Appeals). The Tribunal held that though the then DCEO had resigned the post, the company had been working during the relevant period, that the other Directors were available and that the delay was caused due to negligence and inaction on the part of the assessee.
- The revenue has not filed any counter affidavit disputing the correctness of the affidavit filed by the DECO in support of the delay condonation petition. Thus, the averments set out by the assessee in the affidavit remained uncontroverted. In other words, it was never disputed by the revenue. The stand taken in the affidavit by the assessee before the Commissioner (Appeals) cannot be said to be lacking any *bona fides*. The relevant documents in support of the stand taken by the assessee were appended to the affidavit and unfortunately, the Commissioner (Appeals) did not even venture to deal with those annexures. The Commissioner (Appeals) ought to have considered the fact that the assessee was a joint venture company, which was controlled by the Government of Tamil Nadu and that the DCEO had to be nominated by the Government of Tamil Nadu. Though the Director, who was functioning at the time when the assessment order was received, took a decision to refer the matter to the Board for filing an appeal, subsequently, he resigned the post, as a result of which, a vacuum was created. Though the Board was in existence, as per the rules of the company, a decision had to be taken by the DCEO. This submission made by the assessee has not been disputed by the revenue.
- Furthermore, law of limitation is founded on the principle to give finality to orders and judgments. The intention is not to deny the rights of the parties on technical grounds. In cases where there are *mala fides* on the part of the litigants to approach Courts within time, then Courts have taken strict view, however, less the number of days of delay may be. Ordinarily, no litigant will lodge the case belatedly.
- In the instant case, the revenue has not established any *mala fide* reasons on the part of the appellant to belatedly file the appeal before the Commissioner (Appeals). The Tribunal, while concurring with the view taken by the Commissioner (Appeals), held that the assessee and its directors were guilty of negligence. However, there is no any such gross negligence on the part of the appellant especially in the light of the reasons assigned for filing the appeal belatedly, which

have not been controverted by the revenue. Therefore, the matter should not be shut down on technicalities and a liberal approach should be taken bearing in mind the reasons assigned by the appellant, as the assessee is a joint venture company controlled by the Government of Tamil Nadu and its DCEO, who is invariably in the cadre of IAS Officer, is being nominated by the Government and he has to take a decision to file an appeal.

- The appellant has submitted that in the assessee's own case for the assessment years 1995-96, 1996-97 and 2001-02, a Division Bench of this Court, decided the very same issue in favour of the assessee.
- In the result, the above tax case appeal is allowed, the substantial questions of law are answered in favour of the assessee and the order passed by the Tribunal is set aside. The matter is remanded to the Tribunal to take a decision on the merits of the case.