

(1999) 07 AP CK 0026

Andhra Pradesh High Court

Case No: Writ Petition No. 14455 of 1999 July 14, 1999

VOLTAS LTD.

APPELLANT

Vs

DEPUTY COMMISSIONER OF
Income Tax

RESPONDENT

Date of Decision: July 14, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 256

Citation: (2000) 163 CTR 249 : (1999) 106 TAXMAN 361

Hon'ble Judges: P. Venkatarama Reddy, J; B. Prakash Rao, J

Bench: Full Bench

Advocate: Y. Ratnakar, for the Petitioner and S.R. Ashok,, for the appearing parties;

Judgement

Prakash Rao, J. - This writ petition is filed against the orders rejecting the application filed for condonation of delay of 26 days in seeking reference u/s 256(1) of the Income Tax Act, 1961 ("the Act"). A common order in the appeals filed by the petitioner was passed by the Tribunal on 25-11-1997 for the assessment years 1988-89 and 1989-90, which was received by the counsel for the petitioner on 20-12-1997. The last date for filing application seeking reference was 8-2-1998. However, the application was filed on 6-3-1998 with a delay of 26 days and an application seeking condonation of delay was filed along with the affidavit of the clerk working in the office of the petitioner's counsel stating that the delay had occurred as the original order got misplaced in the office on account of white-washing. Soon after it was traced, the reference was sought. In the impugned order, the application for condonation of delay was rejected on the ground that it was not signed by the counsel and no reasons were given for the delay till the last week of January, 1998 and further that there was no evidence to establish that the deponent of the affidavit was employed in the office of the counsel.

2. u/s 256, the application for reference has to be filed within 60 days from the date it is served and the proviso therein contemplates condoning the delay upto a period of 30 days. It is evident from the affidavit that the delay has occurred due to misplacement and not tracing the original order in the office of the counsel. Normally, as laid down in various pronouncements, the delay aspect. has to be liberal " vice versa so as to provide an opportunity " vice versa to the parties to have a decision 011 In re. In this case, the Tribunal fell into error in expecting the explanation for delay even for the days within the limitation period. Moreover, a party should not suffer for (li) lapses on the part of the counsel, especially when the delay is not too long. The Explanation and the reasons given in (filed affidavit do not leave scope for any doubt as to bona fides. In view of the above, the application needs to be allowed by giving an opportunity to the petitioner for seeking reference. The impugned order is set aside and the delay is condoned. The writ petition is allowed accordingly. No costs.

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