

**THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY**

**Company Application No.987 of 2011**

**In Company Petition No.131 of 1999**

**13<sup>th</sup> December, 2011**

Between :-

M/s.Pennar Paterson Limited (In Prov.Liqn.),  
Rep.by the Official Liquidator,  
High Court of Andhra Pradesh,  
Hyderabad .. Applicant

And

The Settlement Commission,  
Annasalai, Chennai and others .. Proforma Respondents

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**ORDER:-**

This application has been filed by the Official Liquidator representing M/s.Pennar Paterson Limited (In Prov.Liqn.) under Rule 9 of the Companies (Court) Rules, 1959 read with Section 446 (3) of the Companies Act, 1956 seeking direction to the Commissioner of Income Tax (Appeal)-V, Hyderabad, to transfer the proceedings pertaining to the appeal filed against the order dated 30-1-2009 to this Court.

The respondent filed counter affidavit. It is stated in the counter affidavit that further statutory appeal lies to the Income Tax Appellate Tribunal against the order passed by the Commissioner of Income Tax

(Appeals). Para 2 of the counter needs to be noted and it is thus:-

“It is submitted that search and seizure operation was carried out in the case of the Company M/s.Pennar Patterson Securities Ltd (in Liqn). In response to the notice issued under Section 158BC of Income Tax Act, 1961, the Company filed its return of income on 18-11-1997 declaring undisclosed income of Rs.90,70,515/-. The assessment under Section 143(3) read with Section 158 BC of the Act was made determining the undisclosed income at Rs.10,50,63,708/- vide order dt.30-1-2009. Copy of the order of the assessment was served on the assessee Company represented by the Official Liquidator, High Court of Andhra Pradesh, on 2-2-2009. As against the order of the assessment an appeal lies to the 2<sup>nd</sup> respondent under Section 246Aa of the Act. The last date for filing the appeal was 4-3-2009. The appeal was filed on 26-7-2010 with an inordinate delay of 508 days. The 2<sup>nd</sup> respondent appellate Commissioner dismissed the appeal seeing no grounds to condone the delay in filing the appeal. As against the order of the proforma respondent No.2, a further statutory appeal lies to the Income-Tax Appellate Tribunal and a further appeal to the High Court under Section 260-A of the I.T.Act. The assessee however chose not to file an appeal before the Tribunal filed an application seeking review of the order of the 2<sup>nd</sup> respondent. The same was dismissed by the 2<sup>nd</sup> respondent as not maintainable.”

Heard learned Counsel appearing for the parties.

Learned Counsel appearing for the applicant submits that necessary direction is required to be given to the Income Tax Appellate Tribunal to entertain the appeal and pass appropriate orders.

As could be seen from the material brought on record, the applicant has not even filed further appeal before the Income Tax Appellate Tribunal assailing the order of the Commissioner of Income

Tax (Appeals)-V – respondent No.2 rejecting the appeal filed on 26-7-2010. In that view of the matter, this application is disposed of reserving the liberty to the applicant to file further appeal before the Income Tax Appellate Tribunal assailing the order of dismissal of the appeal by the Commissioner of Income Tax (Appeals)-V – respondent No.2. In the event of the appeal being presented by the applicant, the same is required to be considered by the Income Tax Appellate Tribunal in accordance with the provisions of the Income Tax Act and Rules framed thereunder.

Accordingly, the Company Application is disposed of. No order as to costs.

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B.Seshasayana Reddy, J

13<sup>th</sup> December, 2011

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