

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK  
'SMC' BENCH, CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No.466/CTK/2015**  
Assessment Year : 2010-2011

M/s. Trishul Tread Pvt Ltd., Plot No.220, Sec-A, Zone-B, Mancheswar Industrial Estate, Bhubaneswar.	Vs.	DCIT, Circle 2(2), Bhubaneswar.
PAN/GIR No. AABCT 9540 J		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : None  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 16 /05/ 2017**  
**Date of Pronouncement : 16/05/ 2017**

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 30.7.2015, for the assessment year 2010-2011.

2. The assessee has raised the following grounds:

"1. The Assessment Order U/s.143(3) of the Income Tax Act as well as the Appellate Order are against law, weight of evidences and probabilities of the case.

2. The learned Commissioner of Income Tax (Appeal) confirmed the Assessment Order without applying his mind.

3. The learned Assessing Officer has most arbitrarily disallowed Rs.3,74,906/-, on account of expenditure incurred by the Directors through credit card merely recording that, the,/ amount involved are too high and unreasonable without attributing any reason.

4. The learned Assessing Officer has most arbitrarily disallowed Rs.5,50,346/- , when it was explained that the expenditure incurred by the company for two numbers of Directors for attending conference and visit factory of manufacture of equipment's, which are dealt by the company as a dealer.

5. The learned Assessing Officer has most arbitrarily disallowed Rs.4,13,400/-, as commission in lieu of salary paid to the Director. The Director is highly qualified, having vast experience and the learned Assessing Officer applied section 40A(2)(a) of the Income Tax Act by comparing the commission paid with commission paid to the staffs."

3. When the case was called for hearing, none was present on behalf of the assessee and neither any adjournment application was filed. It is observed from the record that the appeal was adjourned at the request of Id Authorised Representative of the assessee on 20.12.2016, 11.1.2017, 20.1.2017, 25.1.2017, 14.3.2017 & 4.4.2017 As sufficient adjournments were granted to the assessee, the appeal was heard ex parte qua the assessee and disposed of considering the submission of Id Departmental Representative and materials available on record.

4. The appeal filed by the assessee is barred by limitation by 73 days. The assessee has filed condonation petition supported by affidavit dated 28.12.2015 explaining the reasons for delay in filing the appeal before the Tribunal. The said condonation petition reads as under:

"The above named appellant has filed an appeal against the order of the Commissioner of Income Tax (Appeal)-I, today i.e. 28<sup>th</sup> of December 2015, after a delay of **Seventy two (72)** days. The Appeal Order passed by the Honourable Commissioner of Income Tax (Appeal)-I, was served in the office of the appellant by post on **17<sup>th</sup>** August, 2015. The order was received by an assistant of the appellant company. Sri P. K. Panda, General Manager, Finance, was representing the appellant company before the Assessing Officer as

well as Commissioner of Income Tax (Appeal)-I. From the month of October, he has been suffering from high diabetes and Blood pressure. Due to high diabetetic and Blood Pressure his nervous system has been affected severely. The Doctor has advised Sri P. K. Panda to take rest and he is under the treatment, even now. He was unable to attend his duty, due to reason mentioned above. However, when Sri P. K. Panda recovered partially, he resumed his duty and checked the correspondence from the Income Tax Department. Then it was revealed that, the Appeal Order was received by the assistant and Sri P. K. Panda immediately contacted the Tax Consultant of the appellant company to file an appeal on behalf of the appellant. Affidavit stating the cause of delay is enclosed herewith. The non-filing of an appeal in the part of the appellant is not intentional rather accidental which happened due to the illness of Sri P. K. Panda, General Manager, Finance, of the appellant company.

Under the above circumstances, the Honourable Bench is prayed to kindly condone the delay of **Seventy two (72)** days in filing the appeal, for which, the appellant shall remain grateful forever."

5. A bare perusal of the above condonation petition shows that the appeal order of the CIT(A) was received by the assessee on 17.8.2015. As per the provisions of section 253(2) of the Income tax Act, 1961, the assessee should have filed appeal before the Tribunal within 60 days from the date of receipt of order of the CIT(A). The assessee has admitted in the condonation petition that the appeal was filed on 28.12.2015 before the Tribunal after the delay of 72 days. The reason explained by the assessee in the affidavit and condonation petition is that the General Manager, Finance, Shri P.K.Panda who was representing the assessee company before the Assessing Officer as well as the CIT(A)-1, was suffering from high diabetes and blood pressure and due to this reason, in October, 2015, his nervous system was affected severely and Doctor advised Shri Panda to take rest and, therefore, he was unable to attend his duty.

6. I find that it is admitted by the assessee in the condonation petition that the appeal order of the CIT(A) was received by post in his office on 17.8.2015. Thus, the appeal was required to be filed by the assessee on or before 5.10.2015. The assessee in the condonation petition is silent about the reasons for non-filing of the appeal during the period from 17.8.2015 to 30.9.2015. Therefore, the condonation petition filed by the assessee cannot be accepted as the delay in filing the appeal for the period from 17.8.2015 to 30.9.2015 has not been explained by the assessee. Further, it has not been stated in the condonation petition as to when Shri P.K.Panda, General Manager (Finance) of the assessee recovered from his illness and that after his recovery the appeal was filed within the prescribed period of 60 days or not. Hence, in the above facts and circumstances of the case, as the delay in filing the appeal before the Tribunal of 72 days has not been explained with plausible reasons, we reject the condonation petition and dismiss the appeal of the assessee as un-admitted.

7. In the result, the appeal filed by the assessee is dismissed as unadmitted.

Order pronounced in the open court on 16/05/2017 in the presence of parties.

Sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

Cuttack; Dated 16 /05/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : M/s. Trishul Tread Pvt Ltyd.,  
Plot No.220, Sec-A, Zone-B, Mancheswar  
Industrial Estate, Bhubaneswar
2. The Respondent. DCIT, Circle 2(2),  
Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BYORDER,

SR.PRIVATE SECRETARY  
***ITAT, Cuttack***