

आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 5525/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2010-11)

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| Worldwide Ship Management Private Limited 302, A-Wing, Galleria Hiranandani Gardens Powai, Mumbai-400076 | बनाम/ v. | Income Tax Officer 15(3)(2) Earlier Ward 10(3)(3) Room No. 452 , 4 th Floor Aayakar Bhawan Churchgate , Mumbai |
| स्थायी लेखा सं./PAN : AAACQ1958N | | |
| (अपीलार्थी / Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| Assessee by : | Shri M.Subramanian |
| Revenue by : | Sh. Sunil Kumar Agarwal,DR |
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सुनवाई की तारीख / **Date of Hearing** : 13-04-2017

घोषणा की तारीख / **Date of Pronouncement** : 21-04-2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 5525/Mum/2015, is directed against the appellate order dated 30th July , 2015 passed by learned Commissioner of Income Tax (Appeals)-24, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 8th March, 2013

passed by the learned Assessing Officer (hereinafter called “the AO”) u/s 143(3) of the Income-tax Act, 1961 (Hereinafter called “the Act”).

2. The grounds of appeal raised by the assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

“1. FIRST GROUND OF APPEAL:

- 1.1. The Learned Commissioner of Income Tax(Appeals) has erred in confirming the addition of Rs. 5,65,566/- out of the total interest paid by the Appellant Company Rs. 18,73,834/- to the Bank on term loan and working capital on ground that arguments put before her were not made before the Assessing Officer(AO).
- 1.2. The Learned Commissioner of Income Tax(Appeals) has erred by ignoring the fact that the interest paid on Term Loan was Rs. 14,18,859/- (out of total interest of Rs. 18,73,834/-) which was exclusively raised and utilized for purchase of office premises during financial year 2007-08 and utilization of those funds for giving loans to directors is impossible.
- 1.3. The Learned Commissioner of Income Tax(Appeals) failed to consider that all fact queries raised by the Assessing Officer during the course of hearing were relied accordingly by the Appellant an all information as required by the AO were provided during the course of assessment proceedings by the Appellant .
- 1.4. Learned Commissioner of Income Tax (Appeals) failed to consider the fact that utilization of bank loan is verifiable from the Balance Sheet already filed with the AO during the course of assessment proceedings.”

3. At the outset learned counsel for the assessee submitted that this appeal is filed late with the tribunal by 28 days beyond the time prescribed u/s 253(3) of 1961 Act. The learned counsel for the assessee submitted that the assessee has duly submitted an application praying for condonation of delay along with

an affidavit dated 13-01-2017 executed by Director of the assessee company explaining the sufficient and reasonable cause which prevented assessee in filing this appeal in time as prescribed under statute. The assessee submitted that Mr. Austin Miranda who was looking after the affairs of the assessee company was sick and consequently the appeal could not be filed in time. The learned counsel for the assessee stated before us about the truthfulness and correctness of the affidavit dated 13-01-2017 filed by the assessee company and prayed that the delay in filing the instant appeal with tribunal may be condoned. The learned DR objected to the condonation application filed by the assessee for condoning delay of 28 days in filing this appeal before the tribunal.

4. We have considered rival contentions and perused the material on record and we are of considered view that the assessee has shown sufficient and reasonable cause in not filing of this instant appeal with tribunal in time as prescribed u/s 253(3) of 1961 Act , which cause averred by the assessee is duly supported by an affidavit dated 13-01-2017 executed by Director of the assessee company averring and deposing reasons for the delay being attributable to ill health of Mr. Austin Miranda who was looking after the affairs of the assessee company who was sick during the relevant period which led to delay in fling of this instant appeal . The learned counsel for the assessee has also made statement before us about truthfulness and correctness of the said affidavit dated 13-01-2017 filed before the tribunal. The said application for condonation of delay and affidavit dated 13-01-2017 are placed in file. Under these factual matrix and circumstance outlining the condonation application filed by the assessee, we are satisfied and inclined to condone delay of 28 days in filing of this instant appeal by the assessee with the tribunal by exercising our powers u/s 253(5) of 1961 Act. It is well settled proposition supported by catena of judgments that if technicalities are pitted against the justice, Courts will lean towards sub-serving the interest of justice

in preference to technicalities, unless mala-fide of the party seeking condonation of delay from Court is shown or negligence on the part of such party in pursuing its legal remedies with diligence is brought on record. We do not find any disabilities in the instant appeal. Thus, in the instant case, we condone delay of 28 days in filing of the instant appeal by the assessee with tribunal and proceed to adjudicate this appeal on merits in accordance with law. We order accordingly.

5. The Brief facts of the case are that the assessee is engaged in the business of crew management where the entire operation of the vessel sailing from port to port is being operated by assessee on behalf of the principals. The entire crew and its provision are operated by the assessee on behalf of the principal. The AO framed an assessment u/s 143(3) of 1961 Act vide assessment order dated 08-03-2013 where-in , inter-alia, additions have been made on account of disallowance of interest to the tune of Rs. 5,65,566/- paid to the bank on term loan and working capital on the grounds that the interest free loan/advance was advanced to Director of the assessee company from interest bearing borrowed funds. The assessee claimed that the said advance/loan granted to the Director was erroneously being grouped as advance for properties while the same is in nature of loan/advance to Director on which interest will be recovered from the said Director retrospectively. It was submitted that the said amount advanced to the said director is in the nature of loan/advance as Director has purchased the property out of said funds in Pune in his personal name. The AO rejected the said contention of the assessee while framing assessment order dated 08-03-2013 passed u/s 143(3) of 1961 Act, wherein interest of Rs. 5,65,566/- was added to the income of the assessee.

6. Aggrieved by the assessment order dated 08-03-2013 passed by the AO , the assessee filed first appeal with learned CIT(A).

7. Before learned CIT(A) , the assessee made submissions that interest is paid on term loans which were raised in financial year 2007-08 for purchase of premises and equipments and it is not possible to grant loans to Director during the relevant previous year out of interest bearing funds raised by the assessee from term loans from banks as the interest bearing funds raised by the assessee from banks towards term loan stood utilized during the financial year 2007-08 itself. It was also submitted that interest bearing working capital loan raised by the assessee from banks were utilized for business of the assessee. , which could be verified from the Balance Sheet of the assessee. The learned CIT(A) rejected the afore-stated contention of the assessee on the grounds that such arguments were not raised by the assessee before the AO and hence addition stood confirmed by the learned CIT(A) vide appellate orders dated 30-07-2015 passed by learned CIT(A).

8. Aggrieved by appellate orders dated 30-07-2015 passed by learned CIT(A), the assessee is in appeal before the tribunal.

9. The learned counsel for the assessee submitted that non consideration and rejection by learned CIT(A) of the explanations and evidences filed by the assessee in its defense before learned CIT(A) on the grounds that such contentions were not raised by the assessee before the AO is clearly erroneous. It was submitted that learned CIT(A) powers are co-terminus with powers of AO and the learned CIT(A) ought to have considered the said explanations and in terms of Rule 46A of Income-tax Rules, 1962 , the learned CIT(A) could have remanded the additional evidences to AO for remand report. It was also submitted that the learned CIT(A) has also not recorded reasons for non consideration of assessee's explanations and evidences as required under Rule 46A of Income-tax Rules, 1962. The learned counsel for assessee prayed that the matter may be set aside and restored to

the file of AO for de-novo determination of the issue on merits by the AO, after consideration of explanation and evidences filed by the assessee in its defense. The learned DR relied upon orders of authorities below but fairly agreed that this issue may be restored to the file of AO for de-novo determination of the issue on merits in accordance with law. Thus, in nutshell both learned counsel for the assessee and learned DR are fairly in agreement that the issue under the instant appeal need to be restored to the file of the AO as there are additional evidences/ explanations on which the assessee is relying on which need verification, enquiry and examination by the AO on merits in accordance with law . The other additions made by the AO are not subject matter of dispute between the rival parties as the said additions have reached finality vide appellate orders dated 30-07-2015 of learned CIT(A). It is not brought on record by learned DR that Revenue is in appeal as against the relief granted by learned CIT(A) to the assessee.

10. We have considered rival contentions and perused the material on record. We have observed that the assessee is engaged in the business of crew management where the entire operation of the vessel sailing from port to port is being operated by assessee on behalf of the principals. The entire crew and its provision are operated by the assessee on behalf of the principal. The AO , inter-alia, made an additions on account of disallowance of interest to the tune of Rs. 5,65,566/- paid to the bank on term loan and working capital on the grounds that the interest free loan/advance was advanced to Director of the assessee company from interest bearing borrowed funds. The assessee claimed before the AO that the said advance/loan granted to the Director was erroneously being grouped as advance for properties while the same is in nature of loan/advance to Director on which interest will be recovered from the said Director retrospectively. The assessee also submitted before the AO that the said amount advanced to the said director is in the nature of loan/advance to the Director as Director has purchase the property in Pune

in his personal name. The AO rejected the said contention of the assessee. Before learned CIT(A) , the assessee made submissions that interest is paid on term loans which were raised in financial year 2007-08 for purchase of premises and equipments and it is not possible to grant loans to Director during the relevant previous year out of interest bearing funds raised by the assessee as the interest bearing funds raised by the assessee stood utilized during the financial year 2007-08 itself. It was also submitted by the assessee before learned CIT(A) that interest bearing working capital loan raised by the assessee from bank were utilized for business of the assessee. , which could be verified from the Balance Sheet of the assessee. The learned CIT(A) instead of adjudicating the said contentions raised by the assessee rejected the contentions of the assessee on threshold on the grounds that such arguments were not raised by the assessee before the AO. The learned CIT(A) committed an error in not considering the said contentions of the assessee on merits. The learned CIT(A) powers are co-terminus with powers of the AO . The learned CIT(A) should have forwarded the additional evidences to learned AO for seeking remand report as mandated u/r 46A of 1962 Rules for necessary examination, enquiry and verification by the AO of these additional evidences. Thus, keeping in view factual matrix of the case and in the interest of justice and fair play to both the parties, we are inclined to set aside and restore this issue to the file of the AO for de-novo determination of the issue on merits in accordance with law. Needless to say that proper and adequate opportunity of being heard shall be provided by the A.O. to the assessee in accordance with the principles of natural justice in accordance with law in the set aside proceedings. The assessee will be allowed by the AO to furnish all necessary/relevant evidences and explanation in his defense in set aside proceedings. We order accordingly.

11. In the result, appeal filed by the assessee in ITA No. 5525/Mum/2015 for assessment year 2010-11 is allowed for statistical purpose.

Order pronounced in the open court on 21st April, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 21-04-2017 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 21-04-2017

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "I" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai