

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

ITA no.7524/Mum./2011  
(Assessment Year : 2007-08)

ITA no.7309/Mum./2013  
(Assessment Year : 2007-08)

Global Enterprises  
Lathiwala Apartment  
Opp. Sales Tax Office  
Mazgaon, Mumbai 400 010  
PAN – AAGPG9195C

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-15(1), Matru Mandir  
Tardeo Road, Mumbai 400 007

..... Respondent

Assessee by : Shri M. Subramanian  
Revenue by : Shri Nitin Waghmode

Date of Hearing – 18.01.2016

Date of Order – 29.01.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

These two appeals by the assessee are against two separate order of the learned Commissioner (Appeals), for the assessment year 2007-08. While appeal in ITA no.7524/Mum./2011 is on the quantum the appeal in ITA no.7309/Mum./2013, is challenging the imposition of

penalty under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*").

ITA no.7524/Mum./2011

2. At the outset, it needs to be mentioned that the Registry has pointed out delay of 360 days in filing the appeal. The assessee has filed an application dated 16<sup>th</sup> October 2011, along with affidavit of the partner explaining the cause of delay. It is the contention of the learned counsel that there was change in the constitution of the firm in assessment year 2007–08 and 2008–09. Subsequently, as a result of inter–se dispute between the continuing as well as retired partners necessary papers / documents required for filing the appeal could not be obtained by the new partners which resulted in delay in filing the appeal. In this context, learned counsel has drawn our attention to the affidavit of the partner at Page–32 of the paper book. He, therefore, submitted that delay caused being for genuine reasons should be condoned.

3. The learned Departmental Representative has opposed condonation of delay.

4. We have considered the submissions of both the parties. As it emerges from the facts on record, there is change in the constitution of the partnership firm frequently during the assessment year 2007-08 and 2008-09, as a result of which old partners retired and some new partners came in. It is also observed from the affidavit of the continuing partner a copy of which is at Page-34 of the paper book, there was some dispute between the continuing and retired partners as a result of which they were not able to obtain the necessary papers. Considering the aforesaid facts, we are of the view that the delay in filing the appeal is for a reasonable cause, hence, we are inclined to condone the delay and admit the appeal for hearing on merit.

5. Assessee, in its appeal in ITA no.7524/Mum./2011, has raised following grounds:-

*"1. That the learned Commissioner of Income Tax Appeals has erred in confirming the addition u/s 69 of Rs.30,50,000/- without providing proper opportunity of being heard, whereas the aforesaid sum represents (i) capital introduced by the partner Mr. Mohammed Zubair Adam Lakdawala Rs.20,00,000/- (ii) capital introduced by the partner Mr. Musa Ismail Lakdawala Rs. 8,00,000/- and (iii) loan balance as on year end from Aziz Mulla Rs.2,50,000 out of opening balance of loan Rs.3,50,000/-.*

*2. That the learned Commissioner of Income Tax Appeals has further erred in confirming the addition of Rs.20,00,000/- as profit on sale of property without providing proper opportunity of being heard, whereas the amount of Rs. 14,22,114/- as credited to profit and loss account represents notional sum added to the value of firm's property on account of revaluation and there was*

*no transfer of any property during the relevant previous year. Further the sum of Rs.14,22,114/- though offered as taxable income can not form part of taxable income as this sum represents only difference on revaluation.*

*3. That the learned Commissioner of Income Tax Appeals has further erred in confirming the disallowance of property tax and repair cess of Rs.2,16,680/- and Rs.1,33,058/- respectively against income from house property, without providing proper opportunity of being heard."*

6. In addition, assessee has raised the following additional grounds:-

ADDITIONAL GROUND

*i) On the facts and in the circumstances of the case and in law, the assessment order passed under section 144 of the Act is invalid and bad in law.*

*ii) On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in estimating the income from house property income at ₹ 6,00,000 and learned CIT(A) erred in partly approving the action of the Assessing Officer.*

7. As the additional grounds raised by the assessee can be decided on the basis of the facts already available on record, we are inclined to admit them.

8. Briefly stated the facts are, assessee is a partnership firm. For the year under consideration, assessee filed its return of income on 15<sup>th</sup> November 2007, declaring total income of ₹ 15,41,947. As stated by the Assessing Officer, since the assessee failed to respond to any of

the statutory notices issued in the course of assessment proceedings, the Assessing Officer proceeded to complete the assessment to the best of his judgment under section 144 of the Act. While doing so, he added the amount of ₹ 30,50,000 under section 69 of the Act observing that assessee has failed to substantiate its claim by producing any evidence. Further, he added an amount of ₹ 20 lakh towards profit on sale of property on an estimate basis by stating that assessee has not furnished any details like sale deed / purchase deed to substantiate its claim. As far as rental income shown by the assessee, the Assessing Officer also estimated the same at ₹ 6 lakh by disallowing the deduction claimed by the assessee. Being aggrieved of the assessment order so passed, assessee preferred appeal before the learned Commissioner (Appeals).

9. The learned Commissioner (Appeals) also confirmed the additions made by the Assessing Officer observing that assessee has failed to establish its claim.

10. Learned Counsel for the assessee submitted before us that the Assessing Officer has completed the assessment ex-parte under section 144 of the Act without giving proper opportunity of being heard to the assessee. He submitted, none of the notices issued were

actually served on the assessee. He submitted, as the assessee was not given proper opportunity, he could not furnish necessary evidence with regard to the relevant issues on which the additions have been made by the Assessing Officer and sustained by the learned Commissioner (Appeals). The learned counsel submitted, the learned Commissioner (Appeals) also disposed of the appeal by merely following the reasoning of the Assessing Officer without considering the written submissions filed by the assessee. In this context, he drew our attention to the copy of the written submissions filed before the learned Commissioner (Appeals) at Page-28 of the paper book containing additional evidence. Learned counsel submitted, on the basis of additional evidence produced before the Tribunal, the assessee would be able to demonstrate that the claim of various income and expenditure made by it in the return of income are correct. He, therefore, submitted that the matter requires to be set aside to the file of the Assessing Officer for denovo assessment.

11. Learned Departmental Representative relying upon the orders of the Departmental Authorities, however, submitted as the assessee has failed to substantiate its claim by producing any evidence before the Departmental Authorities, the additions / disallowance made are justified.

12. We have considered the submissions of both the parties. On a bare perusal of the assessment order and the order passed by the first appellate authority, prima-facie, it appears that disallowances / additions have been made solely for the reason that assessee was not able to produce necessary evidence to substantiate its claim. Undisputedly, assessment in the case of assessee was completed under section 144 of the Act. It is also evident that the additions / disallowances made by the Assessing Officer are either on estimate basis or for the reason that supporting evidences are not available. The learned Commissioner (Appeals) has also confirmed the additions / disallowances more or less accepting the reasoning of the Assessing Officer by observing that assessee has not produced any evidence to support its claim. As far as the addition of ₹ 30,50,000, as unexplained investment on account of introduction of capital by the partner, the assessee, at this stage, has produced certain documents by way of additional evidence to demonstrate that the partners are having sufficient source to introduce the capital. Similarly, assessee has produced details of property tax in respect of rental income. We further find on a perusal of the order of the learned Commissioner (Appeals) that he has not at all considered the written submissions claimed to have been filed by the assessee, a copy of which has been

submitted before us by way of additional evidences. Therefore, considering the fact that the assessment was completed under section 144 of the Act making certain additions / disallowances and at this stage the assessee has produced additional evidences which are not before the Departmental Authorities, we are of the view that matter requires to be set aside / restored back to the file of the Assessing Officer for denovo assessment on all the issues after considering the additional evidence filed by the assessee along with other evidences as may be available on record. Needless to mention, the Assessing Officer must provide adequate opportunity of being heard to the assessee. At the same time, we direct the assessee to co-operate with the Assessing Officer during the assessment proceedings by responding to statutory notices to be issued by the Assessing Officer.

13. Since we have restored back the matter to the file of the Assessing Officer for denovo assessment, the grounds raised on merit are not required to be adjudicated at this stage.

14. In the result, assessee's appeal in ITA no.7524/Mum./2011, is allowed for statistical purposes.

ITA no.7309/Mum./2011

15. Assessee has filed this appeal against confirmation of penalty imposed under section 271(1)(c) of the Act.

16. While deciding assessee's appeal in ITA no.7524/Mum./2011, we have set aside the entire matter to the file of the Assessing Officer for denovo assessment. As the additions on the basis of which penalty was imposed under section 271(1)(c) of the Act no longer exist, the entire matter having been restored back to the file of the Assessing Officer for denovo assessment, the penalty imposed under section 271(1)(c) cannot also survive. Accordingly, we set aside the impugned order of the learned Commissioner (Appeals) and delete the penalty. However, we make it clear, it is open to the Assessing Officer to initiate penalty proceedings under section 271(1)(c), if warranted, after completion of assessment.

17. In the result, assessee's appeal in ITA no.7309/Mum./2011, stands allowed.

Order pronounced in the open Court on 29.01.2016

**Sd/-**  
**ASHWANI TANEJA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 29.01.2016**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai