IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.188/Del./2016
(ASSESSMENT YEAR : 2006-07)

Shri Virender Pal Khurana, C/o Shri Mayank Jain, Advocate Jain Singh and Company, 2, Central Lane (Basement), Bengali Market, New Delhi – 110 001.	vs.	Addl. CIT, Range 39, New Delhi.

(PAN : AALPK5249G)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Aditya Jain, Advocate
REVENUE BY : Shri Deepak Garg, Senior DR

Date of Hearing : 26.09.2017
Date of Order : 28.09.2017

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

There is a delay of 221 days in filing the present appeal which the assessee has sought to be condoned on the grounds inter alia that the file containing order passed under section 154 of the Income-tax Act, 1961 (for short 'the Act') dated 30.03.2015 passed by ld. CIT (A) got misplaced during the termite cleaning of the office of the counsel of the assessee which was subsequently found

while Shri Sanjay Kumar, clerk of the counsel of the assessee was sorting out the disposed off files; that the delay in filing the appeal is neither intentional nor deliberate; that the assessee has a good case on merits in his favour. The ld. DR vehemently opposed the application for condonation of delay and sought to dismiss the appeal.

2. Keeping in view the facts inter alia that when the assessee has been continuously contesting the assessment proceedings before the AO and the ld. CIT (A) by filing appeal and then again before ld. CIT (A) by filing application u/s 154 of the Act, it appears genuine that the delay in filing the present appeal is attributed to the counsel for the assessee only who was under obligation to file the same within period of limitation. So, the inadvertence or negligence, as the case may be, on the part of the ld. Counsel for the assessee in not filing appeal within time cannot be attributed to the assessee who has the right to be heard on merits, hence the delay of 221 days for filing the appeal is hereby condoned.

3. The appellant, Shri Virender Pal Khurana (hereinafter referred to as 'the assessee'), by filing the present appeal, sought to set aside the impugned order dated 03.10.2011 passed by the

Commissioner of Income-tax-XXVIII, New Delhi qua the assessment year 2006-07 on the grounds inter alia that :-

> ***"1. That the Ld. CIT (A) erred in holding that failure of CIT (A) to adjudicate the ground raised before it is not a prima facie mistake and cannot be decided under section 154 of the Act.***
>
> ***2. That the order passed by the Ld.CIT (A) under section 154 of the act is opposed to facts and law.***
>
> ***3. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and law in assuming that the matter has been discussed and no relief has been allowed shows that the issue has been directly confirmed in appeal.***
>
> ***4. On the facts and circumstances of the case, the Ld. CIT(A) has failed to rectify the mistake apparent from record, that the addition of Rs.3,15,000/- on the application of 12% interest is contrary to the rate of mark for the loan from Centurion Bank of 9.25%.***
>
> ***5. That the appellant craves leave to add, amend or alter any grounds of appeal.***
>
> ***6. Alternatively and without prejudice the above rate and quantum of addition sustainable is being prayed to the differential of 9.25% and 9% respectively."***

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : During assessment proceedings, AO noticed that the assessee has forwarded a loan of Rs.60,00,000/- to M/s. Kapson Polycoats out of capital gain offered for taxation to the tune of Rs.50,00,000/- and balance Rs.10,00,000/- has been

shown as loan returned by M/s. Kapson Polycoats which has again been forwarded to the said party. Assessee has given the loan of Rs.60,00,000/- to M/s. Kapson Polycoats at an interest of 9% whereas assessee has taken loan of Rs.28,81,502/- from Centurion Bank, Connaught Place, New Delhi towards construction at an interest of 9.25%. Assessee claimed that the loan was given in the best business interest and out of commercial expediency. However, AO declined to accept the submissions made by the assessee and applied the market rate of 12% on the loan given to M/s. Kapson Polycoats and thereby made an addition of Rs.3,15,000/-.

5. Assessee carried the matter by way of filing appeal before the ld. CIT (A) who has partly allowed the same. Feeling aggrieved, the assessee moved an application u/s 154 of the Act to adjudicate upon grounds no.2(a) and 2(b) raised before ld. CIT (A) regarding the issue in controversy, which was dismissed by ld. CIT (A). Feeling aggrieved, the assessee has come up before the Tribunal by way of challenging the impugned order passed by ld. CIT (A)**.**

6. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Ld. CIT (A) while disposing off the application u/s 154 of the Act returned the findings vide order dated 30.03.2015 as under:-

> ***" The appellant has filed application under section 154 vide letter dated 01.09.2014 that the Commissioner of Income Tax(A) has failed to adjudicate on Ground no.2(a) and 2(b) i.e. on the addition of RS.3,15,000/- by application of 12% rate as against rate of loan from Centurion Bank at 9.25%. However, the perusal of the appellate order dated 03.10.2011 for the relevant assessment year shows that the issue has been referred to by the Commissioner of Income Tax(A) and no specific decision is apparent on the matter. However the fact that the matter has been discussed and no relief has been allowed shows that the issue has been indirectly confirmed in appeal. Further, the claim of the appellant to consider the quantum of addition sustainable as differential of 9.25% and 9% or at the rate of loan taken from the Centurion Bank are not issues which fall under the definition of mistake apparent from record. They require application of mind and therefore are not prima facie mistakes which can be decided under section 154.***
>
> ***Since the mistake are not apparent from record the addition of Rs.3,15,000/- is upheld and application under section 154 of the appellant is rejected."***

8. Bare perusal of the impugned order passed by the ld. CIT (A) dated 03.10.2011 while deciding the appeal shows that the assessee has raised specific grounds no.2(a) and 2(b) qua the issue in controversy but no findings have been returned by the ld. CIT

(A). This fact has been admitted by ld. CIT (A) in the order dated 30.03.2015 passed u/s 154 but declined to decide the issue on the ground that *"this issue requires application of mind and as such is not a mistake apparent on record to be decided u/s 154 of the Act"*.

9. When no findings have been returned by ld. CIT (A) on the issue in controversy neither at the time of deciding the appeal nor at the time of disposing off an application u/s 154 of the Act filed by the assessee, we are of the considered view that the issue is required to be remitted back to ld. CIT (A) to return findings on the issue specifically raised by the assessee vide grounds no.2(a) & 2(b) after providing an opportunity of being heard to the assessee. Hence, the impugned order passed by the dl. CIT (A) is set aside and consequently, appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in open court on this 28th day of September, 2017.

Sd/-	**sd/-**
(N.K. SAINI)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 28th day of September, 2017
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Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT (A)-XXVIII, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.