

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 477 & 479/Mum/2017  
(निर्धारण वर्ष / Assessment Years: 2008-09 & 2011-12)

Elder Projects Ltd. 'Elder House', C-9, Dalia Industrial Estate, Off. Veera Desai Road, Andheri (W), Mumbai-400 058	<b>बनाम/</b> Vs.	ACIT, Central Circle-32, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACE 7387 B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Ujjwal Ganwar
प्रत्यर्थी की ओर से/Respondent by	:	Shri N. Hemalatha
सुनवाई की तारीख / Date of Hearing	:	09.11.2017
घोषणा की तारीख / Date of Pronouncement	:	10.11.2017

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

These are appeals by the assessee against the respective orders of the Id. Commissioner of Income Tax (Appeals) for the concerned assessment years.

2. The common grounds raised (except for the change in figure) read as under:

1. On the facts and circumstances of the Appellant's case and in Law the Ld. Commissioner of Income Tax (Appeals) erred in passing the appellate order without affording effective opportunity of being heard to the appellant.

2. On the facts and circumstances of the Appellant's case and in Law the Ld. Commissioner of Income Tax (Appeals) erred in not condoning the delay in filing the impugned appeal.
  3. On the facts and circumstances of the Appellant's case and in law the Ld Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. AO in disallowing an amount of Rs.14,53,625/- by invoking provisions of section 14A r.w. Rule 8D of the Income Tax Act 1961.
  4. On the facts and circumstances of the Appellant's case and in law the Ld Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. AO in not allowing carry forward of brought forward depreciation amounting to Rs.1,81,56,680/- as per the grounds stated in the impugned order or otherwise.
3. In this case, consequent upon the assessment order passed by the Assessing Officer, the assessee has filed an appeal before the ld. Commissioner of Income Tax (Appeals). In the appellate order, the ld. Commissioner of Income Tax (Appeals) noted that the appeal filed was beyond the statutory period. However, the ld. Commissioner of Income Tax (Appeals) nowhere mentioned the period of delay. Noting that the assessee has also sought several adjournments, the ld. Commissioner of Income Tax (Appeals) proceeded to hold that the delay will not be condoned and the appeal was dismissed as unadmitted.
4. Against this order, the assessee is in appeal before the ITAT.
5. I have heard both the counsel and perused the records. I find that the ld. Commissioner of Income Tax (Appeals) has dismissed the appeal by holding that he was not condoning the delay in filing of the appeal. However, the ld. Commissioner of

Income Tax (Appeals) has nowhere in his order mentioned the delay which he is not condoning. I find that the Hon'ble Apex Court in the case of *Sahara Farms* 300 ITR 403 has held that even an administrative order has to be consistent with rules of natural justice. Proper application of mind is an integral and inalienable part of the same. Dearth of the application of mind by the first appellate authority is palpably manifest in this case. On enquiry, the ld. Departmental Representative submitted that the delay in filing before the ld. Commissioner of Income Tax (Appeals) may be of around one month. Hence in the interest of justice and on the facts and circumstances of the case, the delay in filing before the ld. Commissioner of Income Tax (Appeals) is condoned and the issue raised is remitted to the file of the ld. Commissioner of Income Tax (Appeals). The ld. Commissioner of Income Tax (Appeals) is directed to pass a speaking order on the merits of the case after giving the assessee proper opportunity of being heard.

6. In the result, these appeals filed by the assessee stand allowed for statistical purpose.

परिणामतः निर्धारिती की अपीलें सांख्यकीय उद्देश्य के लिए स्वीकृत की जाती हैं ।

*Order pronounced in the open court on 10.11.2017*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 10.11.2017

व.नि.स./Roshani, Sr. PS

**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)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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