

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1065/Bang/2016
Assessment year : 1994-95

M/s. Ivy Product Intermediaries Limited, (Earlier known as "ING Vysya Financial Services Ltd./The Vysya Bank Leasing Ltd."), 22, M. G. Road, Bengaluru-560 001. PAN : AA ACT8127G	Vs.	Joint Commissioner of Income Tax, Special Range 6, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. Ananthan, CA
Revenue by	:	Smt. Padma Meenakshi, JCIT

Date of hearing	:	13.11.2017
Date of Pronouncement	:	17.11.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of CIT(A), *interalia*, on the following grounds:

"GROUND NO. I - Non-condonation of delay in filing appeal"

- 1. The Commissioner of Income tax (Appeal) - 7, Bengaluru ["hereinafter referred to as "the CIT(A)"] erred in not condoning delay in filing appeal and thereby dismissing the Appellant's appeal in limine on technical ground without deciding on the merits of the case.*
- 2. He further erred in not considering the specific directions given by the Hon'ble Tribunal to decide the case on merits*
- 3. He failed to appreciate and ought to have held that there are good and sufficient reasons for the delay in filing the appeal.*
- 4. The Appellant prays that the delay be condoned and CIT (A) be directed to admit the said appeal to be heard on merits.*

GROUND NO. II - Contempt of Tribunal Order

1. *He further erred in not considering the specific directions given by the Hon'ble Tribunal to decide the case on merits and thereby committed contempt of the Hon'ble Tribunal.*
2. *He failed to appreciate and ought to have held that order of Tribunal was binding on the first Appellate Authority and the failure to follow the same may constitute contempt of Tribunal's order.*

GROUND NO. III - Disallowance of Depreciation of Rs.24,50,937 on leased assets

1. *1. The learned CIT(A) erred in not deciding the issue on merits and thereby disallowing depreciation of Rs.24,50,937 in respect of assets leased to Kedia Distilleries Ltd.*
2. *2. The Appellant prays that it be held that the assets do existed in AY 1994-05 and depreciation be allowed to Appellant being owner thereof.*

GROUND NO. IV — Without Prejudice Ground- Non allowance of Capital Portion on leased assets embed in lease rentals.

1. *Without prejudice to the above, the learned CIT(A) erred in not deciding the issue on merits and thereby not granting reduction on account of capital portion embed in lease rentals in respect of assets leased to Kedia Distilleries Ltd.*
2. *The Appellant prays that in the event if such transactions are ultimately held to be finance transaction and depreciation on the same is denied to the Appellant, it be granted reduction of capital portion embed in lease rentals in respect of such assets.*

The Appellant craves leave to add, amend, 'alter or delete any of the above grounds of appeal as may be advised in due course."

2. During the course of hearing, the learned counsel for the assessee has invited our attention that vide order dated 25.05.2005, the Tribunal has set aside the order of the CIT(A) dismissing the appeal of the assessee being barred by limitation, with the direction to readjudicate the appeal on merit. Though the Tribunal has not given any specific finding in the order with regard to the condonation of the delay in filing of the appeal but when once the matter is set aside to the CIT(A) to decide the appeal on merit, it amounts to the disposal of the ground of delay in filing of appeal before the

CIT(A) by condoning the delay in filing of appeal before the CIT(A). Though the CIT(A) was required to adjudicate the issues afresh on merit but the CIT(A) instead of disposing of the appeal on merit had dismissed the appeal of the assessee being barred by limitation. The learned counsel for the assessee further contended that on this issue alone earlier appeal was dismissed by the CIT(A) and the order of the CIT(A) was set aside by the Tribunal but the CIT(A) instead of deciding the appeal on merit had dismissed the appeal summarily on the ground of limitation. The learned counsel for the assessee further contended that since the direction of the Tribunal was not complied with by the CIT(A), the order may be set aside and matter may be restored with the direction to readjudicate the appeal on merit after making it clear that the delay in filing of the appeal has been condoned.

The learned DR on the other hand has submitted that the Tribunal has set aside the matter back to the CIT(A) to decide the appeal on merit and the merit includes disposal of the issue of limitation. Therefore, the CIT(A) has rightly adjudicated the appeal on the point of limitation and having noticed that the appeal is barred by limitation, the CIT(A) dismissed the same.

3. Having carefully examined the orders of authorities below, vis-à-vis the order of Tribunal, we find that while disposing the appeal, the Tribunal has restored the matter to the file of the CIT(A) with the direction to readjudicate the issue afresh on merit after giving adequate opportunity to the assessee. This appeal before the Tribunal was filed against the order of the CIT(A) dismissing the appeal being barred by time. Basically, the main issue involved in that appeal was the issue of limitation or whether the appeal was barred by time or not. The Tribunal has set aside the order of the CIT(A) meaning thereby the findings by the CIT(A) holding that appeal is barred by limitation was set aside by the Tribunal. Thereafter, the Tribunal restored the matter back to the CIT(A) with the direction to readjudicate the issues afresh after giving adequate opportunity to the assessee, meaning thereby having setting aside the order of the CIT(A) dismissing the appeal being barred by limitation, the Tribunal reversed the view by the CIT(A) that the appeal is barred by limitation. When the matter was restored back to CIT(A), the CIT(A) was required to adjudicate the issue on merit and not on the issue of limitation. Despite this clear finding of the Tribunal,

the CIT(A) has again dismissed the appeal on the point of limitation. This finding of the CIT(A) does not appear to us to be proper. We accordingly set aside the order of the CIT(A) and restore the matter to the CIT(A) with a direction to adjudicate the appeal on merit after affording opportunity of being heard to the assessee. This time we want to make it clear that the issue relating to limitation point has become res integra in the light of the order of the Tribunal dated 25.05.2005. Therefore, now the CIT(A) is not required to adjudicate the issue of limitation. The issues on merit are required to be adjudicated. We accordingly restore the appeal to his file for fresh adjudication.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on November, 2017.

(INTURI RAMA RAO)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Place : Bangalore
Dated : 17/11/2017
/NShylu/*

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|---|----------------------|---|------------|
| 1 | Appellant | 2 | Respondent |
| 3 | CIT(A)-II Bangalore | 4 | CIT |
| 5 | DR, ITAT, Bangalore. | 6 | Guard file |

By order

Sr. Private Secretary,
ITAT, Bangalore.