

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2016/Ahd/2015
Assessment Year 2008-09**

M/s Asian Agency FF-29, Krishna Gopal Estate, Opp. State Bank of India, Nr. Fruit Market, Naroda Road, Ahmedabad-380025 PAN: AAIFA5304K (Appellant)	Vs	The ITO, Ward-12(2), Ahmedabad (Respondent)
--	----	--

**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Parin Shah, A.R.**

Date of hearing : 07-11-2017
Date of pronouncement : 16-11-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2008-09, arises from order of the CIT(A)-7, Ahmedabad dated 01-05-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act:

2. The assessee has raised following grounds of appeal:-

- “1. Ld. CIT (A) erred in law and on facts in dismissing the appeal on the ground of late filing of the appeal without appreciating the fact that due to health reasons there was delay in filing the appeal on time despite paying appeal fees well in advance. The order of Id. CIT (A) dismissing the appeal in absence of delay condonation petition is harsh & uncalled for.*
 - 2. It is respectfully submitted to the Hon'ble Bench to set aside the appeal to the file of Id. CIT (A) to decide the issues on merits granting opportunity to the appellant to submit evidences condoning the delay in filing of appeal considering the circumstances narrated above. It be so held now.*
 - 3. Ld. CIT (A) erred in law and on facts in dismissing the appeal without adjudicating grounds challenging addition of Rs. 3, 85, 78, 246/- made by AO being difference of credit balance as per the books of Kirloskar Ferrous Industries Limited on merits.*
 - 4. Levy of interest under section 234A/B/C of the Act is not justified.*
 - 5. Initiation of penalty u/s 271(1)(c) of the Act is not justified.”*
3. In this case, return of income declaring income of Rs. 9,60,560/- was filed on 23rd September, 2008. Thereafter, assessment u/s. 143(3) was made on 23rd December, 2010 by determining total income at Rs. 10,64,730/-. During the course assessment proceedings for assessment year 2009-10 the assessing officer has noticed while examination of detail received from one of the creditor named Kirloskar Ferrous India Ltd. that in its books of accounts debit balance of Rs.29,87,770/- was standing against the name of the assessee whereas the assessee has shown credit balance of Rs.41566106/- against the name of above named creditor. Therefore, the assessee has observed that assessee has shown creditors of Rs. 38578296/- in excess in the case of Kirloskar

Ferrous India Ltd. in assessment year 2008-09. Subsequently, the case was reopened by issuing of notice u/s. 148 of the act.

During the course of reassessment proceedings, the assessing officer has stated that assessee has not reconciled the discrepancy reflected in the sundry creditor, therefore, the difference of Rs. 38578246/- was added to the total income of the assessee as unaccounted income. Thereafter, the assessee has preferred appeal before the Id. CIT(A). Nobody has attended the proceedings before the Id. CIT(A). Consequently, the Id. CIT(A) has dismissed the appeal of the assessee. During the course of appellate proceedings before us, the Authorized Representative of the assessee has filed an affidavit stating that Shri Chandrakant B Lakhisarani, the partner who was managing the tax related affairs of the assessee-firm has not attended the office due to ill health. He further submitted that relevant paper sent by Shri Chandrakant B Lakhisarani was not delivered to him as his accountant had left the job. He stated that under these circumstances, there was delay in filing the appeal before the Id. CIT(A) and the proceedings before the Id. CIT(A) was not attended as there was no personal hearing taken place. On the other hand, Id. departmental representative relied on the order of the Id. CIT(A). After hearing both the sides, we considered that the appeal of the assessee was dismissed as the assessee had not filed any petition for condonation of delay before the Id. CIT(A). We observed that the affidavit, application for condonation along medical certificate filed by the Authorized Representative of the assessee demonstrate that there was there was reasonable cause for not filing

the aforesaid information before the CIT(A). Therefore, in the interest of justice we restore this case to the file of Id. CIT(A) along with aforesaid information for adjudicating this case on merit after affording adequate opportunity to the assessee.

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

Order pronounced in the open court on 16-11-2017

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 16/11/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तालम अ०मत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलअय आधकरण,
अहमदाबाद