

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.819 & 820/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Opal Asia Logistics Pvt. Ltd., 601, Sabari Samriddhi, Sion Trombay Road, Chembur- 400071	बनाम/ v.	DCIT 10(2), Mumbai
स्थायी लेखा सं./PAN : AAACO8297L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by :	Shri. Rajat Mittal

सुनवाई की तारीख / **Date of Hearing** : 18-01-2018

घोषणा की तारीख / **Date of Pronouncement** : 19-01-2018

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

These two separate appeals, filed by the assessee, being ITA No. 820 & 819/Mum/2016 for assessment year 2011-12, are directed against two separate appellate order dated 09.12.2015 and 10-12-2015 passed by learned Commissioner of Income Tax (Appeals)-22, Mumbai (hereinafter called "the CIT(A)") respectively , both for assessment year 2011-12 , the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 18-02-2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called

“the Act”) and secondly against the penalty order dated 28-08-2014 passed by the AO u/s 271(1)(c) of the 1961 Act.

2. First we will take up appeal in ITA no. 820/Mum/2016 being appeal against quantum assessment framed by the AO u/s 143(3). The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) in ITA no. 820/Mum/2016 read as under:-

1. *The Ld AO is erred in disallowing interest expenditure of Rs 20,34,707/-, which in fact was taken for the business purpose only.*
2. *The Ld AO is also erred in adding a sum of Rs 96,22,454/- as undisclosed income in spite of the fact that the Appellant had not received such income showing in 26AS.*
3. *The Ld CIT (A) is erred in confirming the above additions without adjudicating the ground/s on merits.*
4. *The Ld CIT(A) is also erred in not considering the condonation of delay in filing the appeal, which was based on the belief that the order was rectifiable.*
5. *The Appellant prays to consider the condonation of delay in filing the appeal before the Ld CIT (A) and delete the additions made by the AO.*
6. *The Appellant craves to add, alter, modify or delete any of the above ground/s of appeal.”*

3. The assessment in this case was framed by the AO u/s. 143(3) vide assessment order dated 18-02-2014, wherein two additions were made by the AO to the returned income, as under:-

Total loss per return of Income	2,92,73,688
Additions made by assessment order u/s 143(3): i) disallowance of interest	20,34,707
ii) Undisclosed receipt	96,22,454
Total Loss assessed	1,76,16,527

The brief facts of the case are that the assessee is freight forwarding company . There were mismatch between the income as reflected in 26AS/TDS certificate with revenue as shown in audited Profit and Loss

account. The assessee was not able to reconcile such difference in revenue which led to the additions to the income of the assessee to the tune of 96,22,454/- by the AO vide assessment order dated 18-02-2014 passed u/s 143(3). Second additions was also made by the AO wherein the assessee had made interest free advances to the tune of Rs. 170,08,516/- out of borrowed funds on which the assessee paid interest on the allegation that the said interest free advances were not utilized for the purpose of business of the assessee which led to disallowance being worked out of the interest expenses to the tune of Rs. 20,34,707/- , vide assessment order dated 18-02-2014 framed by the AO u/s 143(3).

4. Aggrieved by the assessment framed by the AO u/s 143(3) vide assessment order dated 18-02-2014, the assessee carried the matter in appeal before the learned CIT-A by filing first appeal but there was a delay of 183 days in filing the said appeal before the learned CIT-A . The assessee duly filed before learned CIT(A) affidavits and written submissions supported by application for condonation of delay explaining the delay on the grounds that the assessee was under a bonafide belief that the said matter can be rectified by the A.O u/s. 154 and there was no need to file an appeal before the learned CIT-A which led to delay in filing of an appeal before the learned CIT-A . The request for condonation of delay in filing of appeal was rejected by the learned CIT-A which led to dismissal of appeal in limine on the short ground of being not filed in time vide appellate order dated 09-12-2015 passed by learned CIT(A).

5. Aggrieved by the appellate order dated 09-12-2015 passed by learned CIT(A) , the assessee has come in an appeal before the tribunal .

6. None appeared for the assessee when the appeal was called for hearing . It is contended by the assessee in the grounds of appeal filed as well pleadings before learned CIT(A) as borne out from the appellate order passed by learned CIT(A), that sufficient cause was shown by the assessee for filing the appeal late by 183 days beyond the time stipulated under the 1961 Act and the assessee was under a bona-fide belief that the issue of reconciliation of the difference in the reported income between the income as shown in 26AS/TDS certificates and the income shown in the audited P&L Account can be resolved by filing rectification application u/s. 154 before the AO for

which time limit of 4 years is prescribed as also for the other issue similar belief was held by the assessee which is claimed to be a bonafide belief of the assessee and prayer is made that substantial interest of justice vis-a-vis technicalities demand that in the interest of substantial justice , the issue may be restored to the file of learned CIT(A) with direction that an appeal be directed to be admitted by learned CIT-A and thereafter adjudicated on merits by learned CIT(A).

7. The Ld. DR objected to remand of the issues back to the file of learned CIT(A) but fairly submitted that if Bench so decide then another opportunity may be granted to the assessee by restoring the matter to the file of the learned CIT-A and assessee be directed to adduce necessary evidences and explanation to justify its claim on merits before learned CIT-A.

8. We have heard learned DR and perused the material on record . We have observed that the assessee is in the business of freight forwarding. An assessment was framed by the AO u/s. 143(3) vide assessment order dated 18-02-2014 wherein two additions were made to the returned income of the assessee , as under:

Total loss per return of Income	2,92,73,688
Additions made by assessment order u/s 143(3): i) disallowance of interest	20,34,707
ii) Undisclosed receipt	96,22,454
Total Loss assessed	1,76,16,527

Thus, broadly two additions were made by the A.O wherein mainly the addition of Rs. 96,22,454/- was made on account of difference between income as reported in 26AS/TDS certificates and the audited books of accounts. The assessee filed first appeal before the learned CIT-A however the said appeal filed before the learned CIT(A) was delayed by 183 days beyond the time prescribed under the 1961 Act . The assessee has submitted affidavits and written submissions supported by an application for condonation of delay before learned CIT(A) in the course of appellate proceedings before learned CIT(A), wherein assessee has shown reasons that it was under bona-fide belief that the issues can be resolved by filing an

rectification application u/s. 154 of the Act for which limitation period of 4 years is provided . The learned CIT-A did not condone the delay and rejected the appeal in limine on the grounds that the said appeal was filed belatedly with an delay of 183 days beyond the period stipulated under the 1961 Act for filing of the said appeal. After perusal of the material on record and after hearing learned DR ,we are of the considered view that in the interest of substantial justice vis-a-vis technicalities , the assessee deserves one more opportunity and we are inclined to accept the contentions of the assessee by setting aside the appellate order dated 09-12-2015 passed by learned CIT(A) and direct learned CIT-A to admit the appeal filed by the assessee albeit belatedly by 183 days and adjudicate the issues afresh de-novo on merits after considering the contentions and evidences to be submitted by the assessee before learned CIT(A) in denovo proceedings. We direct the assessee to appear before the learned CIT-A within 60 days of the receipt of this order and produce before learned CIT-A all necessary evidences and contentions to support its stand on merit which will be adjudicated by learned CIT-A on merits in accordance with law. We direct accordingly.

9. The appeal of the assessee in ITA no. 820/Mum/2016 is allowed for statistical purposes.

ITA no. 819/Mum/2016

10. This appeal is filed by the assessee for the assessment year 2011-12 which emanates from learned CIT-A order dated 10.12.2015 wherein penalty levied by the A.O u/s 271(1)(c) was confirmed by learned CIT-A. Since the learned CIT-A while adjudicating appeal against quantum assessment has not decided the issues on merits but rather dismissed the appeal in limine for delay in filing of appeal late by 183 days by the assessee and we while adjudicating an appeal against the said order of learned CIT(A) in ITA no. 820/Mum/2016 vide this common order has set aside and restored the matter in appeal against quantum assessment to the file of learned CIT-A . Thus, in the interest of substantial justice , this matter also need to be restored to the file of learned CIT-A for fresh adjudication denovo on merits after adjudicating the appeal against quantum assessment. We order accordingly.

11. The appeal of the assessee in ITA no. 819/Mum/2016 is allowed for statistical purposes.

12. In the result both the appeal of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 19.01.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 19.01.2018 को की गई ।

Sd/-

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 19.01.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, H
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI