

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA**

Before Sh. N. K. Saini, AM and Sh. Sudhanshu Srivastava, JM

ITA No.86/Pat./2016, Asstt. Year :2010-11

M/s Mameraj Construction Pvt. Ltd. Patna.	Vs	DCIT, Circle-3, Gaya
(APPELLANT)		(RESPONDENT)
PAN No. AAFCM2802C		

Assessee by : Shri Nishant Maitim , C.A.
Revenue by : Shri Kaushik Kumar Das., Sr. D.R.

Date of Hearing : 15.03.2018	Date of Pronouncement : 16 .03.2018
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ORDER

Per Sudhanshu Srivastava, JM:

This appeal has been preferred by the assessee against the order dated 30.03.2016 passed by the Ld. CIT (A)-Gaya for assessment year 2010-11.

2. At the outset the, the Ld. AR submitted that there was a delay of 65 days in filing the appeal. It was submitted that the delay was not intentional but had occurred due to unavoidable circumstances beyond the control of the assessee. The reasons as mentioned in the affidavit are as under:

“That the 1st Appellate Order for A. Y, 2010-11 was served to us on 30.04.2016. We were required to file 2nd appeal before ITAT on or before 29/06/2016. However, there is a delay of One Month. Please note that the accountant to whom the work of filing of

appeal was assigned went out of town for one month during vacation and therefore could not contact our counsel. We are not having any person in office capable to handle this appeal in house. Thereafter, he started culling out data of our case. Hence the delay by us was not intentional. Thus the late filing was due to the reasons totally beyond our control. Looking at the fact that our erstwhile counsel has not taken necessary steps, please take a lenient view and condone the delay."

It was prayed that the delay be condoned.

3. The Ld. Sr. DR opposed the assessee's prayer for condonation of delay.

4. We have heard the rival submissions and have also perused the material on record. We are of the considered opinion that looking into the facts of the case the delay deserves to be condoned. Accordingly, we condone the delay and admit the appeal for hearing.

5. The Ld. AR submitted that the impugned order as well as the order of the AO was passed ex-parte. It was prayed that the assessee be granted another opportunity to explain the case before the lower authorities.

6. In response, the Ld. Sr. D.R. opposed the assessee's prayer for the issue being restored to the lower authorities.

7. We have heard the rival submissions and have perused the material on record. It is true that the assessee had not appeared before the AO as well as the Ld. CIT (A). The AO has made assessment u/s144 of the Income tax Act, 1961. The Ld. CIT (A) has dismissed the assessee's appeal ex-parte. Undoubtedly, the approach of the assessee has also been very casual and careless. However, looking into the facts of the case and in the interest of justice, we restore the issues to the file of the AO for passing the assessment order *de novo* after giving proper opportunity to the assessee to present its case. We also direct the assessee to extend all possible cooperation during the assessment proceedings failing which the AO shall be at liberty to proceed *ex-parte* in accordance with law.

8. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order Pronounced in the Court on 16/03/2018)

Sd/-
(N.K. Saini)
ACCOUNTANT MEMBER

Sd/-
(Sudhanshu Srivastava)
JUDICIAL MEMBER

Dated: 16 /03/2018
s.sinha*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR