

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.5679 & 5680/M/2016  
Assessment Years: 2010-11 & 2011-12**

Shri Raviraj Laxman Relempaadu, Room No.402, 4 <sup>th</sup> Floor, Prathamesh Building, Subhash Road, In front of CEAT Main Gate, Nahur, Mumbai-400 078 <b>PAN: AFDPR 4214B</b>	Vs.	ACIT 23(1), New Charge:ACIT-29(1), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Devendra Jain, A.R.  
Revenue by : Shri V. Vidhyadhar, D.R.

Date of Hearing : 17.04.2018  
Date of Pronouncement : 27.04.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The above titled two appeals have been preferred by the assessee against the common order dated 21.06.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2010-11 & 2011-12.

2. At the outset, the Ld. A.R. of the assessee submitted that there is a delay of 15 days in filing the appeal which is due to the ignorance of the assessee. An affidavit was also filed explaining the reasons for filing late appeal. The Ld. A.R.

submitted that the assessee was not even aware of the fact that the assessment order is to be appealed before the ITAT and only when the matter was brought to the notice of the consulting Chartered Accountant who advised the assessee to file the appeal immediately and hence the delay of 15 days has occurred and prayed that the same should be condoned in the interest of justice and fairplay and the matter be heard on merit.

3. The Ld. D.R. strongly objected to the contentions of the assessee that the delay in filing the appeal is not attributable to the reason that it is beyond control of the assessee and therefore both the appeals should be dismissed.

4. We have heard the submissions of both the parties and perused the relevant records. In our opinion, the delay in filing the appeal is of 15 days which is due to bonafide belief of the assessee that order of Ld. CIT(A) is not appealable. In our opinion the assessee should not be denied justice due to technical reasons such as delay in filing the appeal. The predominant moto of providing for mechanism of appeal is to afford the assessee a full opportunity so that the assessee could be imparted justice for any wrong application of law or wrong doing by authorities and thus justice is not denied for minor delays/defects. The reliance is placed in the case of National Thermal Power Ltd. (1998) 229 ITR 383 (SC) and Jute Corporation India vs. CIT (1991) 187 ITR 687 (SC). Keeping in view of the facts of the case we are of the view that this a case where the delay deserved to be condoned.

We are, therefore, inclined to condone the delay and admit both the appeals for adjudication on merit.

5. At the outset, the Ld. Counsel submitted that ground No.3 is not pressed and therefore the same is dismissed as not pressed.

6. The issue raised in ground No.1 is against the confirmation of action of AO confirming the addition of Rs.60,60,799/- being the difference between the receipts as per P & L account and 26AS as unexplained income despite the fact that the assessee has offered the same in the subsequent assessment year 2011-12.

7. The facts in brief are that the AO during the course of assessment proceedings noticed that the assessee has shown turnover of Rs.5,73,28,054/- whereas as per 26AS it is seen that the gross turnover was of Rs.6,92,90,061/- on which a TDS of Rs.10,37,548/- was deducted by the respective parties. The AO has given the breakup of the said turnover party wise in para 4 of the assessment order. Accordingly, the assessee was issued a show cause notice which was replied vide letter dated 21.03.2013 submitting that the details of deduction of tax at source by Petron Engineering Construction Ltd. was not available as this was not reflected in 26AS. The said amount was in dispute with the said company and was not received. The said amount was released by the said company in financial year 2010-11 relevant to A.Y. 2011-12 and duly shown in the return of income and the due taxes

were also paid. The reply of the assessee did not find favour with the AO and he added Rs.60,60,799/- being the difference between books of accounts of the assessee and form 26AS by rejecting the contention made by the assessee.

8. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee by holding that the assessee is following mercantile system of accounting and receipts of income has to be accounted for on the accrual basis. The Ld. CIT(A) noted that the assessee has rendered services to the said company in F.Y. 2009-10 notwithstanding the fact that the amount was in dispute with the said company and income has accrued in A.Y. 2010-11 and thus justified the confirmation of addition.

9. We have heard the rival submissions and perused the material on record. The undisputed facts are that the assessee has rendered his services to M/s. Petron Engineering Construction Ltd. during F.Y. 2009-10 which was disputed by the said company and no payment was made during the year. The said payment was released by the said company in the subsequent financial year 2010-11 and the assessee has duly shown the same in the books of accounts and paid the due taxes thereon. At the time of filing the return the said entry was also not appearing in form 26AS which was uploaded by the said company in the subsequent year. Taking into account the totality of facts and circumstances, we are of the view that when the assessee has paid the taxes and returned the income in the A.Y. 2011-12 the same should not be added in

A.Y. 2011-12 for the technical reasons that assessee is following mercantile system of accounting. In this case there was no evasion of tax on the said income. Taking into account the all the facts , we are accepting the contention of the assessee without going into the alternative plea raised by the assessee that if the addition is confirmed in the instant year the same should be directed to be excluded from assessment year 2011-12 to avoid double taxation . Accordingly direct the AO to delete the addition made of Rs.60,60,799/-.

10. The issue raised in 2<sup>nd</sup> ground of appeal is against the disallowance of interest expenditure of Rs.6,22,541/- by Ld. CIT(A) as made by the AO under section 40(a)(ia) on account of non deduction of TDS.

11. At the outset, the Ld. Counsel for the assessee submitted the payees have already filed the returns of income and duly disclosed the said interest income in their respective returns of income and therefore, the issue is covered in favour of the assessee by 2<sup>nd</sup> proviso to section 40(a)(ia) of the Act which provides that if the payee has included the amount of income paid by the assessee without deduction of tax at source and due taxes are paid as per applicable law then the assessee cannot be treated as assessee in default in respect of that payment. The Ld. A.R. requested that the issue be restored to the file of AO for verification and allowing the claim of the assessee as per facts and law.

12. The Ld. D.R. fairly agreed to the prayer of the assessee.

13. We have heard the rival submissions of both the parties and perused the material record. In this case the assessee has paid a sum of Rs.6,22,541/- to six finance companies as has been detailed in para 5.1 of the assessment order. We find merit in the contentions of the assessee that if the payee's companies have returned the said amount of interest in their respective returns of income and paid the taxes thereon then no disallowance under section 40(a)(ia) is called for as the assessee cannot be treated in default in terms of 2<sup>nd</sup> proviso to section 40(a)(ia) of the Act. Accordingly, we restore this issue back to the file of AO with a direction to verify whether the payee's companies have returned the interests in their respective returns of income, if so, the of the addition of Rs.6,22,541/- will not survive and has to be deleted. The AO is directed as stated hereinabove.

14. In the result, the appeal is partly allowed for statistical purposes.

**ITA No.5680/M/2016 (for A.Y. 2011-12)**

15. The only issue raised in ground No.1 is against the disallowance of interest expenditure of Rs.20,76,807/- under section 40(a)(ia) of the Act on account of non deduction of tax at source.

16. We have already decided identical issue in ITA No.5679/M/2016 (supra) and therefore our findings in the said appeal, mutatis mutandis, would apply to this appeal as well.

Accordingly, the issue is restored to the file of AO and AO is directed to allow the same, if the payee has offered the said interest amount in their respective returns.

17. In the result, assessee's appeals i.e. ITA No.5679/M/2016 for A.Y. 2010-11 is partly allowed for statistical purpose and ITA No.5680/M/2016 for A.Y.2011-12 is allowed for statistical purpose.

**Order pronounced in the open court on 27.04.2018.**

**Sd/-  
(Saktijit Dey)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.04.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.