



ITA Nos.2215 & 2216/Mum/2015
Perputo Content Management Pvt.Ltd
Assessment Years: 2008-09 & 2009-10

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.2215 & 2216/Mum/2015
(निर्धारण वर्ष / Assessment Years: 2008-09 & 2009-10)

Perputo Content Management Pvt. Ltd. C/o V.N.Deodhar & Co. 4/3 'Radha', 1 st Floor Shastri Hall, Grant Road(W) Mumbai-400 007	बनाम/ Vs.	Income Tax Officer 9(2)(4) Mumbai-400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.AADCP-6770-G		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	V.Jenardhanan,Ld.DR
Assessee by	:	Milin Thakore,Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	24/04/2018
घोषणा की तारीख / Date of Pronouncement	:	27 /04/2018

आदेश / ORDER

Per Bench

1. The captioned appeals by assessee for Assessment Years [AY] 2008-09 & 2009-10 contest separate order of Ld. Commissioner of Income Tax (Appeals)-58, Mumbai [CIT(A)], Appeal Nos.CIT(A)-58/Arr-27 & 28/2014-15



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both dated 09/01/2015. Since common issue is involved, the appeals are being disposed-off by way of this common order for the sake of convenience & brevity.

2. Facts in AY 2008-09 are that the assessee being *resident corporate assessee* has been assessed u/s 143(3) *read with Section 144C* on 16/02/2012 at Rs.142.67 Lacs after certain adjustments / disallowances as against returned income of Rs.23.84 Lacs filed by the assessee on 30/09/2008. The assessment order is stated to be served on the assessee on 28/06/2012. *M/s Kulkarni Dhuri & Company, Chartered Accountants [AR]* represented the assessee during assessment proceedings and vide letter dated 06/04/2011, they had requested Ld. AO to send all notices / letters at the address of the AR.

3. Aggrieved by the additions / disallowances, the assessee preferred an appeal against the same through his *AR* before Ld. CIT(A) without any success vide impugned order dated 09/01/2015. The appeal before Ld. CIT(A) was filed on 21/03/2014 i.e. after delay of 602 days, the condonation of which was sought vide letter dated 16/04/2014. However, Ld. CIT(A) noted that the assessee was, all throughout, supported by *qualified Chartered Accountants* and further it was the *official liquidator*, being Company Secretary, who was to sign the appeal papers and decide the matter of filing of appeal and therefore, AR of the assessee had no role in filing the appeal. Finally not convinced with assessee's explanation and placing reliance on various judicial pronouncements, the delay was not



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condoned by Ld. first appellate authority and the appeal was dismissed on the ground of delay, against which the assessee is in further appeal before us.

4. The Ld. Authorized Representative, similarly pleading for condonation of delay, took us through chronology of the events to support his stand in the following manner:-

Sr. No.	Event date /Reference	Particulars	Page No. of Paper book	Affidavit para no.
1	April / May 2010	Termination of all employed staff and shut down of operations, since Perputo Inc. (the sole customer of Perputo Content Management Private Limited (PCMPL)) terminated its contract with PCMPL.	1-2	5c
2	13.12.2010	Special resolution passed at Extraordinary General Body Meeting to wind up the company through the method of voluntary liquidation.		5d
3	06.04.2011	Letter filed with the office of the Assessing Officer to send all letters/notices to Authorized Representatives (AR) of the PCMP.L		5e
4	16.02.2012	Date of final Assessment order under section 143(3) r.w.s. 144C(3) served on 28.06.2012.		5f
5	E-mail dated 12.03.2012	Mail sent from PCMPL to the AR asking if any scrutiny notice was received for AY 2008-09 so that way forward can be discussed with the liquidator.	3	
6	E-mail dated 30.05.2012	Mail sent from PCMPL to the ARs requesting to forward the Assessment Order for AY 2008-09 as soon as it is received.	4	
7	28.06.2012	Assessment Order was served on the ARs.		5f
8	E-mail dated 24.07.2012	Reminder mail sent to the ARs post the mail dated 30.05.2012 requesting for the final assessment order for AY 2008-09.	4	
9	E-mail dated 05.08.2012	Assessment order for AY 2008-09 dated 16.02.2012 forwarded to PCMPL by the ARs informing that appeal to the CIT(A) can be filed only until next week.	5	5g
10	E-mail dated 06.08.2012	Mail correspondence from PCMPL to Deloitte requesting to review the order received from the TP perspective so as to file appeal with the CIT(A).	6	5h
11	E-mail dated 09.08.2012	Mail from PCMPL to the ARs informing them of the TP grounds suggested by Deloitte and requesting them to file the appeal to the CIT(A) within the available time.	5	5i
12	E-mail dated 16.11.2012	Mail from PCMPL to the ARs documenting the ARs confirmation that the appeal has been successfully filed suggesting that the additional demand raised for the year be paid off so that additional interest is not accumulated and requesting the opinion of the ARs on the same.	8	5k
13	E-mail dated 24.07.2013	Mail from PCMPL to the ARs asking for a status update on the appeal filed for AY 2008-09 and requesting a copy of the appeal papers filed by the ARs.	9	5l
14	E-mail dated 18.09.2013	Mail from PCMPL to the ARs following up on the non-receipt of appeal papers for AY 2008-09 and requesting for the same.	10	5m
15	E-mail dated 20.09.2013	Mail correspondence from PCMPL to DHS LLP forwarding the final assessment orders and TP orders for AY 2008-09 and 2009-10. Further informing DHS LLP that the ARS claim that they have filed an appeal with the CIT(a) for AY 2008-09 in Aug 2012 but the appeal filed has not been	11	5n



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		<i>forwarded to PCMPL.</i>		
16	<i>E-mail dated 15.10.2013</i>	<i>Mail correspondence from DHS LLP TO PCMPL informing that they have been in constant contact with the ARs and have been reassured by the ARs that they will share all the details by 16.10.2013.</i>	12	5o
17	<i>E-mail dated 20.10.2013</i>	<i>Mail correspondence for PCMPL to DHS LLP requesting an update on the status of appeal documents which were to be received from the ARs.</i>	12	5p
18	<i>E-mail dated 21.10.2013</i>	<i>Mail correspondence from DHS LLP to the AR referring to the discussion had on 09.10.2013 and 15.10.2013. The mail is sent requesting the ARs to share the details that were assured to be sent by 16.10.2013, also mentioning the fact that the ARS could not be connected to despite several attempts.</i>	13	5q
19	<i>E-mail dated 05.11.2013</i>	<i>Mail correspondence from PCMPL to DHS LLP wherein it is mentioned that the company is still under the belief that the ARS have filed an appeal for AY 2008-09 in July/Aug 2012. However, it is stated that PCMPL has still not received a copy of the appeal filed despite multiple follow ups with the AR. PCMPL further requested DHS LLP to held get a copy of the appeal filed for AY 2008-09 from the ARs.</i>	14-15	5r
20	<i>12.11.2013</i>	<i>Mr. Gopalan from PCMPL met the ARs.</i>	14	5s
21		<i>The department /staff in the office of the CIT(A) was not accepting the appeal (signed by liquidator) without further background and facts in relation to liquidation of the company.</i>		5t
22	<i>E-mail dated 14.01.2014</i>	<i>Mail correspondence from PCMPL to the liquidator requesting him to sign any documents that may be required by the ARs for Income-tax purposes.</i>	16	5u
23	<i>E-mail dated 14.01.2014</i>	<i>Mail correspondence from PCMPL to the ARs providing a detailed write up about the background facts required for the appeal to be accepted by the staff of CIT(A).</i>	17-18	5u
24	<i>21.03.2014</i>	<i>Letter for condonation of delay filed.</i>	1-2	5v
25	<i>21.03.2014</i>	<i>Date of filing the appeal to Commissioner of Income-tax (Appeals) (delay of 602 days).</i>	1-2	5
26	<i>16.04.2014</i>	<i>Letter explaining cause for delay in filing of appeal and request for condonation of delay.</i>		6

The supporting documents as referred to in the above table have been placed in the *paper-book* filed before us. The petition is also supported by an affidavit dated 12/04/2016 executed by *Ramesh Gopalan, Country Head-India*. The Ld. Counsel pleaded for condonation on the ground that the assessee acted in good faith and stood to gain nothing by filing the appeal with a delay. Reliance has been placed on various judicial pronouncements to support the various submissions.

5. Per *Contra*, Ld. Departmental Representative [DR] pointed out that company was under liquidation and it was the liquidator only who was



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responsible for filing the appeal and therefore, the condonation petition need to be filed by him and not by the assessee's representative as rightly pointed out by Ld. CIT(A). The Ld. DR also contended that all these submissions / documentary evidences were not available before Ld. CIT(A) and therefore, the same being additional evidences, need to be confronted to first appellate authority.

6. Upon careful consideration, we find that assessee had sought condonation of delay before Ld. CIT(A) vide letter dated 16/04/2014, which is not before us and therefore, it is not clear as to the stand taken by the assessee therein. Secondly, it is undisputed fact that the company was under liquidation and it was the liquidator only who alone was competent to carry out proceedings on behalf of the company. Therefore, on totality of facts and circumstances, we deem it fit to restore the matter back to the file of Ld. CIT(A) for reconsideration of additional evidences submitted by the assessee before us and decide the same in the light of submissions made by the assessee. Needless to add that if the delay is condoned, the appeal shall be disposed-off on merits. Resultantly the assessee's appeal stands partly allowed for statistical purposes.

7. The assessee's appeal for AY 2009-10 has similarly been dismissed by Ld. CIT(A) since the appeal was filed with a delay 323 days and the delay was not condoned by first appellate authority. Facts being the same, the matter stand remitted back to the file of Ld. CIT(A) on similar lines. Resultantly, this appeal also stands partly allowed for statistical purposes.



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8. Finally, both the appeals stand partly allowed in terms of our above order for statistical purposes.

Order pronounced in the open court on 27th April, 2018.

Sd/-

Sd/-

(Saktijit Dey)

(Manoj Kumar Aggarwal)

न्यायिकसदस्य / **Judicial Member**

लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 27. 04.2018
Sr.PS:- Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त)अपील (/ The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि ,आयकरअपीलीयअधिकरण ,मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai