IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Shri Saktijit Dey, Judicial Member &
Shri Rajesh Kumar, Accountant Member

ITA No.1274/Mum/2018
Assessment Year : 2010-11

M/s Dedhia Housing Corporation Plot No.231/6, 1st Floor, Manju Appt., R B Mehta Marg, Ghatkopar (E), Mumbai 400 077. PAN AAAFD2512Q	Vs.	The DCIT Circle 22(1), Mumbai
(Appellant)		(Respondent)

Appellant By : Dr P Daniel
Respondent By : Shri Ram Tiwari

Date of Hearing :16.04.2018		Date of Pronouncement : 31.05.2018

O R D E R

Per Rajesh Kumar, Accountant Member

The aforesaid appeal has been filed by the assessee against the impugned order dated 02.09.2013, passed by the CIT(A)- 33, Mumbai, for the assessment year 2010-11.

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

"1. The Learned C.I.T. (A) erred in law and on facts in confirming the disallowances of purchases of Rs. 29,47,054/- out of the total purchases.
2. The Learned C.I.T. (A) erred in law and in facts in disallowing the genuine purchases which were used in the construction work and the payments were made by A/c Payee cheques.
3. The Learned C.I.T. (A) erred in law and on facts confirming the averments made by the A.O. in the assessment order.
4. The order passed by the learned C.I.T. (A) is bad in law."

3. At the outset, the Bench raised a query on the counsel of the assessee qua the appeal of the assessee being time barred by 1085 days, to which the learned AR admitted and tried to explain the said delay by referring to the copy of the affidavit and other evidences filed for explaining the said delay. The learned AR submitted that the order passed by the CIT(A) dated 02.09.2013 was received by the assessee on 15.01.2015, for which the due date for filing the appeal before the Tribunal was 16.03.2015, whereas the appeal was filed on 07.03.2018 thereby delayed by a period of 1087 days. The learned AR submitted that when the appellate order was received, the then partner Shri Jayesh Dedhia was not keeping well, he had suffered heart attack and, hence, advised complete bed rest for two weeks. In the mean time, the order of the CIT(A) was lying with the then accountant of the assessee, who left the job in April 2015 and, thereafter, a new accountant was appointed. The assessee came to know about the non-filing of appeal only when the penalty appeal was listed for hearing and it was found that no quantum appeal was filed against the order of the CIT(A). Thereafter, the appeal was filed immediately. The learned AR submitted that the delay in filing the appeal was unintentional, not deliberate and it occurred due to the things which were beyond the control of the assessee. The learned AR further submitted that the reasons for delay being genuine, the assessee may be pardoned and the delay be condoned. He further placed reliance on the decisions of the Apex Court in the case of N Balakrishnan vs. M Krishnamoorthy (AIR 1998 SC 3222) and that of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC). During the course of hearing, the assessee also filed copies of the prescription of the Doctor advising the partner Shri Jayesh Dedhia, complete bed rest from time to time.

4. The learned DR, on the other hand, strongly objected to the admission of appeal as the same is delayed extraordinarily by 1087 days and, moreover, the assessee has failed miserably to explain the delay in filing the appeal. He therefore, contended that the appeal of the assessee should be dismissed as being time barred.

5. We have heard rival submissions and have carefully perused the relevant material available on record. The appeal of the assessee is delayed by 1087 days, which has been submitted to be on account of poor health of the then partner Shri Jayesh M Dedhia, who suffered a heart attack and had been advised complete bed rest. The delay is also stated to be attributed to the resignation of the accountant of the assessee, who left the job and in place a new person was recruited. The new recruit was completely unaware of any such appeal. The assessee finally came to know about non filing of the appeal only when the penalty appeal was listed for hearing. Having examined the facts in total and weighing the same in the light of various judicial pronouncements, especially that of Hon'ble Apex Court in the case of N Balakrishnan vs. M Krishnamoorthy and National Thermal Power Company Ltd. vs. CIT (supra), we are of the view that the rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics, their remedy promptly. The object of providing legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never be recalled. The Hon'ble Supreme Court also noted that sufficient cause under section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice to the aggrieved parties. We, therefore, keeping in the view the ratio laid down by the Apex Court in both the above cases, are inclined to condone the delay and admit the appeal for adjudication in the foregoing paras.

6. The only issue raised in the appeal is against the confirmation of the disallowance of purchases of Rs 29,47,054/- by the CIT(A) ignoring the fact that all these purchases were genuine and the material purchased were used in the construction activity and the payment to the parties were made by account payee cheques.

7. The facts in brief are that the AO during the course of assessment proceedings issued notices u/s. 133(6) of the Act to the parties to verify the purchases by the assessee. However, the notices in respect of three parties, viz. M/s. Ratnadeep Tubes, Veer Industries and Chetna Enterprises from whom purchases totalling to Rs 29,47,054/- were made, returned un-served by the postal authorities. The assessee was asked to produce these parties in order to verify them and prove the genuineness of the transactions. However, the assessee vide letter dated 14.02.2013 submitted that the parties were not traceable and, therefore, it was not in a position to produce the said parties. The assessee also admitted that in order to buy peace of mind it voluntarily offered to add the said purchases to its total income subject to no further action.

8. However, the assessee being aggrieved by the said addition filed appeal before the CIT(A) on the ground that the material purchased were used in the construction activity and the payment to the parties were made by account payee cheques. It was also pleaded that the mere fact that the parties are not traceable cannot be the sole ground for making the addition in the hands of the assessee. It was also contended before the CIT(A) that the submissions before the Assessing Officer vide letter dated 14.02.2013 was without prejudice to the additions offered and reserving the right to appeal and no adverse action on the assessee. However, when the same was not followed and complied with by the department, the assessee has filed the appeal before the first appellate authority. The submissions of the assessee

did not find favour of the CIT(A), who upheld the addition made by the Assessing Officer by observing as under:

> *"9. I have perused the contents of the letter dated 14.02.2013 which the appellant has filed before the A.O. in assessment proceedings wherein it had categorically been submitted that if its contentions with regard to the genuineness of purchases were not accepted by the A.O., then in order to buy peace of mind, the appellant would offer to add value of purchases amounting to Rs 29,47,054/-. The Hon'ble Jurisdictional High Court in the case of Ramesh Chandra & Co. vs. CIT (35 Taxmann 153) (Bom)168 ITR 375, held that where an assessee has made a statement of facts, he can have no grievance if the taxing authority taxes him in accordance with the statement. In the present case, the appellant had voluntarily offered the value of purchases to be added to his total income and there is nothing on record to suggest that the appellant was forced or coerced or influenced in filing a letter before the A.O. Even on this account, I do not find any reason to interfere with the order of the A.O. The action of the A.O. in treating the purchases of Rs 29,47,054/- as bogus purchases is upheld. This ground is dismissed."*

9. We have heard rival submissions and have perused the material available on record. The undisputed facts are that the assessee, a partnership firm, is engaged in the business of construction. During the assessment proceedings, the Assessing Officer could not verify purchases from three parties as stated herein above, amounting to Rs.29,47,054/-. The notices issued u/s. 133(6) of the Act were returned un-served by the postal authorities. The learned CIT(A) dismissed the appeal of the assessee on the ground that the assessee itself had voluntarily offered the value of purchases to be added to his total income when it was confronted with the fact of non service of notices issued under section 133(6). The assessee also could not produce the said parties before the Assessing Officer. We find merit in the contention of the learned AR that the purchases in the present case are not bogus and the parties involved are not declared as hawala parties by the sales tax department of Government of Maharashtra. The learned AR also

contented before us that the Assessing Officer has not disputed the corresponding consumption in the construction and sales of the assessee. After carefully analyzing the facts on record and submissions of the rival parties, we find that in similar case the co- ordinate Bench of the Tribunal has been taking a consistent view that even if the purchases are not genuine or are bogus the entire addition to the income of the assessee is uncalled for and wrong. The purpose of the statute is only to tax the income of the assessee, which is only a fraction of the total purchases. Under these circumstances we are of the considered view that the total addition to the income of the assessee on account of purchases from three parties is not justified and cannot be sustained. We, therefore, deem it fit and proper to apply a gross profit rate of 4% and set aside the order of the CIT(A). The Assessing Officer is directed accordingly.

10. In the result, the appeal is partly allowed.

Order pronounced in the open court on this day of 31st May,2018

Sd/-
(Saktijit Dey)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai; Dated : 31st May 2018

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbaiz