

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]**

I.T.A. No. 280/Kol/2018
Assessment Year: 2011-12

Equal Infrastructure Pvt. Ltd......**Appellant**
4, B.B.D. Bag(E), Stephen House,
5th Floor, Room No. 77,
Kolkata – 700 001.
[PAN: AACCE 3835 C]

ITO, Ward 5(3) Kolkata.....**Respondent**
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:

Shri Rajesh Kumar Duggar, FCA appearing on behalf of the Assessee.
Shri Satyajit Mondal, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : May 30, 2018

Date of pronouncing the order : June 08, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – 2, Kolkata dated 04.01.2018 whereby he dismissed the appeal of the assessee in limine by treating the same as barred by limitation.

2. The assessee in the present case is a company which is engaged in the business of trading in securities and investments. The return of income for the year under consideration was filed by it on 30.09.2012 declaring a total income of Rs. 3,714/-. During the course of assessment proceedings, notices under section 131 were issued by the AO to the directors of the share-holders who had made investment in the assessee company in the form of share capital and share premium aggregating to Rs. 6,00,00,000/-. The said notices however remained uncomplied with. The assessee company also

failed to produce the directors of the share-holder companies and to prove the genuineness of the relevant share transactions and establish the identity and creditworthiness of the share-holders in spite of sufficient opportunity afforded by the AO. The AO, therefore, treated the entire share capital and share premium amount of Rs. 6,00,00,000/- received by the assessee company as unexplained cash credit and made the addition to that extent to the total income of the assessee under section 68 of the Act. He also made a further addition of Rs. 13,50,888/- to the total income of the assessee on account of disallowance under section 14A and determined its total income at Rs. 6,13,54,602/- in the assessment completed u/s 143(3) vide an order dated 09.03.2015.

3. Against the order passed by the A.O. u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) challenging the validity of the said assessment as well as disputing the additions made therein on merit. There was however a delay of about four months on the part of the assessee in filing the said appeal before the Ld. CIT(A). In this regard, a petition was filed by the assessee before the Ld. CIT(A) seeking condonation of the said delay on the ground that it could not maintain good relationship with its authorised representative as a result of high-pitched assessment and since the appointment of new consultant created litigation, the papers required for filing the appeal could not be made in time. This explanation offered by the assessee for the delay in filing the appeal was found to be very vague and evasive by the Ld. CIT(A) and blaming the assessee for gross negligence, inaction and laches, he rejected the request of

the assessee for condonation of delay. Accordingly the appeal of the assessee was dismissed by him in limine by treating the same as barred by limitation. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the delay of four months in filing this appeal before the Ld. CIT(A) was explained by the assessee by submitting that its relation with the authorised representative had strained as a result of high-pitched assessment made by the AO and there was some dispute that had arisen when the assessee tried to change the consultant and appoint a new consultant. As a result of the said dispute, the documents required for filing the appeal could not be made available in time which resulted in delay in filing the appeal before the Ld. CIT(A). In my opinion, this specific reason given by the assessee for the delay of about four months in filing its appeal before the Ld. CIT(A) constituted a sufficient cause and the Ld. CIT(A) was not justified in treating the same as vague and evasive. In my opinion, it also cannot be considered as a case of any gross negligence, in action and laches on the part of the assessee as alleged by the Ld. CIT(A). I, therefore, set aside the impugned order passed by the Ld. CIT(A) dismissing the appeal of the assessee by treating the same as barred by limitation and remit the matter back to him for deciding the appeal of the assessee afresh on merit after condoning the delay and after giving the assessee proper and sufficient opportunity of being heard.

5. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 8th June, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 08/06/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Equal Infrastructure Pvt. Ltd., 4, B.B.D. Bag(E), Stephen House, 5th Floor, Room No. 77, Kolkata – 700 001.
2. ITO Ward 5(3), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata