

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri Inturi Rama Rao, Accountant Member**

ITA Nos. 558/Hyd/2017 & 537/Hyd/2018
(Assessment Year: 2014-15)

M/s. Arcochart Trading & Shipping P Ltd, Mumbai C/o Interocean Shipping (India) Private Ltd, Muthukur,A.P PAN: AAKCA5933H (Appellant)	Vs	Income Tax Officer (International Taxation) Nellore (Respondent)
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For Assessee :	Shri Subramanyam Chimalapati
For Revenue :	Smt. M. Narmada, DR

Date of Hearing:	14.08.2018
Date of Pronouncement:	31.08.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

Both are assessee's appeals for the A.Y 2014-15 against the order passed by the AO u/s 172(4) of the Act.

2. At the time of hearing, the learned Counsel for the assessee has filed a letter dated 03.07.2018 seeking permission to withdraw the appeal in ITA No. 537/Hyd/2018, because the assessee had already filed an appeal against the same order of CIT(A) for the same A.Y. and on the same issues on 27.3.2017

which is numbered as ITA No.558/Hyd/2017. Therefore, there is duplication of appeals. We accordingly dismiss appeal in ITA No.537/Hyd/2018.

3. As regards ITA No.558/Hyd/2017 is concerned, the assessee has raised the following grounds of appeal:

“On the facts and circumstances of the case and in law:

1. The Ld CIT(Appeals) erred in dismissing the appeal of the appellant company in limine and not admitting the same by not condoning the delay in filing of the appeal on the basis of the application filed by the Appellant for condonation of the delay together with the affidavit filed along with the appeal memo.

2. The Ld Income Tax Officer, International Taxation (Assessing Officer or 'AO') erred in passing the order under section 172(4) of the Income tax Act on the Appellant's agent and assessing the freight income from the vessel "MV Polypailin Naree" by applying provisions of section 172 of the Act.

3. The Ld AO has made the assessment under section 172(4) even though the Appellant in the instant case is an Indian resident Shipping Company and the provisions of section 172 are not applicable to resident Ship Owner.

4. The Ld Commissioner of Income Tax (Appeals) erred in not appreciating that the Ld Income Tax Officer, International Taxation erred in applying the rate of 7.5% of the freight income earned as per the provisions of section 172(2) when the said section is applicable on the non resident ship Owner and hence the order is void ab initio.

5. The Ld AO further erred in applying the income tax rate of 40% while computing the income tax liability of the Appellant by erroneously considering the Appellant as a non resident Company.

6. The Ld AO further erred in treating M/s Interocean Shipping Pvt Ltd as Agent of the Appellant Company

under the provisions of section 172(3) when that provisions is applicable only if the Ship Owner is the Nonresident.

7. The Ld AO further erred in passing the protective assessment order on the Indian agent when the tax on the income from freight earned by the Appellant Company is paid in its assessment order passed under section 143(3) of the Income tax Act as the Appellant Company is a resident company.

The appellant craves to add to, alter or amend the foregoing grounds, which are without prejudice to one another, at the time of hearing”.

4. As seen from Ground No.1, the CIT (A) has dismissed the assessee's appeal by refusing to condone the delay. The learned Counsel for the assessee submitted that the delay in filing of the appeal before the CIT(A) was only of 40 days and that the application u/s. 154 of the Act, assessee had filed under the impression that the assessee would get relief in the said appeal but the application u/s. 154 was rejected on 20.02.2015 and therefore, the appeal against the order u/s 172(4) was filed with a condone delay petition. It was submitted that the delay was only due to the assessee pursuing the 154 application and was not wilful and therefore prayed for relief.

5. The learned DR, however, relied upon the orders of the CIT (A).

6. Having regard to the rival contentions and the material on record, we find that the delay in filing of the appeal before the CIT (A) was only of 40 days. We are convinced by the reasons given by the assessee that he was pursuing the alternate remedies before the AO and therefore, the delay has occurred. We therefore, condone the delay of 40 days in filing of the appeal before the CIT(A) and direct the CIT (A) to dispose of the appeal on merits.

7. In the result, assessee's appeal in ITA No.558/Hyd/2017 is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 31st August, 2018.

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 31st August, 2018.

Vinodan/sps

Copy to:

- 1 M/s. Archochart Trading & Shipping (P) Ltd, Flat No.01, MK Bhawan, Ground Floor, 300 Bhagat Singh Road, Fort, Mumbai-400001
- 2 ITO (International Taxation), Nellore
- 3 CIT (A)-10 Hyderabad
- 4 CIT – (IT & TP) Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order