

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, " ए", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, 'A', CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य**  
**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND**  
**Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 733/CHD/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Kerry Ltd., G.T. Road (West), Jalandhar Bye Pass, Ludhiana	Vs. बनाम	The DCIT, Circle-3, Ludhiana
स्थायी लेखा सं./PAN NO: AAACE3690D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Subhash Agarwal, Advocate

राजस्व की ओर से/ Revenue by : Smt.Chandrakanta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 11.12.2018

उदघोषणा की तारीख/Date of Pronouncement : 11.12.2018

**आदेश/Order**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 21.12.2016 of the Commissioner of Income Tax(Appeals)-1, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. The appeal is time barred by 55 days. A separate application for condonation of delay has been filed accompanied with an affidavit of one Shri Ajay Sharma, Director of the assessee company, wherein, it has been pleaded that assessee did not receive the notice of hearing before the CIT(A) as the assessee company has shifted its operation to Bangalore. That even the order of the CIT(A) was served on one Shri Jatinder Kumar who

was serving as a security guard of the lessor / land owner of the assessee and that he did not inform in time to the assessee about the receipt of the said notice. Therefore, a delay of 55 days has occurred in filing the appeal. The Ld. Counsel has further submitted that in this case the addition is regarding the disallowance of the rent expenditure for the year under consideration. However, for the assessment year 2014-15 onwards the assessee had already shifted its premises to the Bangalore.

In view of the above submissions, which are further supported with the affidavit of the director of the company and considering the shortness of the period of delay, in our view, the interest of justice will be served if the delay in filing the appeal is condoned. We order accordingly.

3. The Ld. counsel at this stage has invited our attention to the impugned order of the CIT(A) and has submitted that the same is an ex-parte order. It has been submitted that the assessee could not get the notice of the hearing before the CIT(A) which resulted in ex-parte proceedings. It has, therefore, been submitted by the Ld. Counsel for the assessee that the assessee may be given an opportunity to appear before the CIT(A) to present its case.

4. The Ld. DR, on the other hand, has opposed the above submissions of the Ld. counsel and has submitted that assessee has failed to appear as when called for by the Ld. CIT(A) and, hence, the Ld. CIT(A) has passed the impugned order ex-parte of the assessee.

5. The Ld. counsel for the assessee, however, has submitted that even on merits, the impugned additions are not sustainable in the eyes of law. Referring to the issue involved in this case, the Ld. Counsel has submitted

that the disallowance has been made by the Assessing officer observing that there was increase in the rent on year to year basis. The Assessing officer observed that there was no justification to increase the rent every year. However, on the other hand, the contention of the assessee has been that rent was increased under compelling circumstances. The assessee was in process of shifting its premises. However, since it could not vacate / shift its premises, hence, it agreed to pay the increased rent. However, the payment of rent had not been disputed by the Assessing officer.

6. On the other hand, Ld. DR has submitted that there was no justification of the assessee to increase rent every year and, therefore, the Assessing officer has rightly taken note of that the assessee has booked the expenditure which was apparently excessive.

7. We have considered the rival submissions. The payment of rent for the year under consideration has not been doubted by the Assessing officer. The only contention for which the impugned disallowance has been made is that the assessee had not offered convincing justification for the increase in rent. On the other hand, the contention of the assessee was that it had to increase / pay the increased rent due to compelling circumstances as discussed above. It is also a fact on the file that the assessee ultimately in the year 2013-14 has shifted its premises and vacated the premises for which the alleged rent has been paid. We are of the view, that the payment of rent has not been disputed, and the assessee has explained the compelling circumstances for which there was an increase in rent. There was no justification on the part of the lower authorities in making the impugned disallowance and the same is accordingly ordered to be deleted.

In the result, the appeal of the assessee stands allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

Sd/-  
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)  
लेखा सदस्य/ Accountant Member

Sd/-  
(संजय गर्ग / SANJAY GARG)  
न्यायिक सदस्य/ Judicial Member

**Dated : 11.12. 2018**

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar