

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, 'बी' चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, 'B', CHANDIGARH**

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य  
**BEFORE SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANJAY GARG,**  
**JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos. **582 to 585/CHD/2017**

निर्धारण वर्ष / Assessment Years : 2010-11 & 2013-14

M/s Saber Paper Ltd, Vill Humbran, Near Bhora Sahib Gurudwara, Ludhiana	Vs. बनाम	The DCIT, Central Circle-II, Ludhiana
स्थायी लेखा सं./PAN NO: AALCS2723E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Rajiv Sharma, Advocate

राजस्व की ओर से/ Revenue by : Sh. G.S.Phani Kishore, CIT DR

सुनवाई की तारीख/Date of Hearing : 06.02.2019

उदघोषणा की तारीख/Date of Pronouncement : 18.02.2019

**आदेश/Order**

**Per Bench:**

These appeals by the assessee are directed against the separate orders each dated 16.1.2017 on quantum additions and dated 31.1.2017 on the penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for the assessment years 2010-11 and 2013-14 respectively passed by the Ld. CIT(A)-5 Ludhiana.

2. Since the issues involved are common and the appeals were heard together, so these are being disposed off by this consolidated order for the sake of convenience and brevity. At the first instance we will deal in **ITA No. 582/Chd/2017.**

3. Following grounds have been raised in this appeal:

*A. On refusal to condone delay and holding appeal not maintainable*

*1. That the order of the learned Commissioner of Income Tax (Appeals)-5, Ludhiana dated 16.01.2017 is wrong against law and facts of the case.*

*2. (a) That the learned Commissioner of Income Tax (Appeals)-5, Ludhiana erred in not condoning the delay for filing the appeal within time due to clerical mistake at the then Counsel's Office.*

*(b) (i) That the learned Commissioner of Income Tax (Appeals)-5, Ludhiana failed to consider the fact (for consideration of delay) that appeal for orders passed for assessment year 2012-13 and assessment year 2013-14 passed on the same day that is 31.03.2015 has been filed within the limitation.*

*(ii) That the learned Commissioner of Income Tax (Appeals)-5, Ludhiana failed to consider inadvertent mistake in filing of appeal within the time limit, which is manifest in the fact that requisite appeal fee of Rs. 1000/- has been paid within the limitation of filing of appeal (30-04-2015).*

*B. On Merits*

*3. That the Ld. Commissioner of Income Tax (Appeal)-5, Ludhiana failed to appreciate the facts and statistically confirming the disallowance of Rs. 6,09,198/- on account of disallowance of interest under section 14A of the Income Tax Act, 1961.*

*4. That the learned Commissioner of Income tax (Appeal)-5, Ludhiana failed to appreciate the facts and statistically confirming the disallowance of depreciation of Rs. 25,97,175/- by the learned Assessing Officer.*

*5. That the learned Commissioner of Income tax (Appeal)-5, Ludhiana failed to appreciate the facts and statistically confirming the addition of Rs.4,85,00,000/- on account of funds invested by M/s. Sigma Fincap Pvt. Ltd.in appellat company.*

*C. General*

*6. That the assessee craves to amend, alter, delete or supplement any ground of appeal before the appeal is finally heard and disposed off.*

4. From the above grounds, it is gathered that the main grievance of the assessee relates to dismissal of the appeal in limine, treating the same as barred by limitation without considering the application filed by the assessee for condonation of delay.

5. During the course of hearing, Ld. Counsel for the assessee at the very outset stated that the Ld. CIT(A) without considering the submissions of the assessee and facts of the present case in right perspective did not condone the delay, if any, and treated the appeal of the assessee as not maintainable being time barred. It was further stated that the delay in filing the appeal, if any, before the Ld. CIT(A) was not intentional and the explanation was given in the application by the assessee which had not been considered by the Ld. CIT(A).

6. In his rival submissions, the Ld. CIT DR supported the impugned order of the Ld. CIT(A).

7. We have considered the submissions of both the parties and perused the material available on record. In the present case, it is an admitted fact that the Ld. CIT(A) dismissed the appeal of the assessee in limine by considering the same as not maintainable being barred by limitation. The relevant findings given by the Ld. CIT(A) in para 3.3 of the impugned order read as under:-

*“3.3 To sum up, from the facts of this case on records, it is apparent that the assessee did not file the appeal in time and there is no reasonable cause for the same. The fact about non filing of appeal against the quantum addition has been duly mentioned by the AO in the penalty order dated 29/09/2015. The assessee has filed appeal against the penalty order on 27/10/2015, well within the prescribed time but no appeal was filed against the quantum addition even at that occasion. The filing of appeal now (on 12/12/2016) after the issue of hearing notice dated*

*09/11/2016 u/s 250 for the penalty related appeal is apparently an afterthought and the delay is without any sufficient and good reasons. The reasons mentioned for condonation of delay are not supported by cogent and proper evidence. Hence the same are not acceptable and therefore rejected. The contentions of the assessee are found without any basis, hence the delay in filing of appeal is not condoned and the appeal is not maintainable being time barred.”*

8. From the aforesaid observation of the Ld. CIT(A), it is noticed that the Ld. CIT(A) although mentioned that the reasons given by the assessee were not supported by the cogent and proper evidence, however, he has not discussed how and in what manner the reasons given were not sufficient and what evidences were required. Therefore, considering the totality of facts, we deem it appropriate to set aside this case to the file of the CIT(A) to be adjudicated afresh in accordance with law after considering the explanation given by the assessee for the delay, if any, in filing the appeal before him, if there is a plausible explanation and the CIT(A) is satisfied, then the delay, if any, may be condoned and thereafter the appeal is to be decided on merit after providing due and reasonable opportunity of being heard to the assessee.

9. In **ITA No. 583/Chd/2017** for the assessment year 2010-11, the assessee has challenged the confirmation of penalty levied by the Assessing officer u/s 271(1)(c) of the Act. Since the issue relating to the quantum addition has been restored to the file of the Ld. CIT(A) and the penalty u/s 271(1)(c) of the Act is directly co-related with the quantum addition, therefore, this issue is also set aside to the file of the CIT(A) to be adjudicated afresh along with the appeal of the assessee on quantum addition.

10. For the assessment year 2013-14, the facts are identical as were involved for the assessment year 2010-11 which we have already adjudicated in the

former part of this order, therefore, our findings given therein for the assessment year 2010-11 shall apply mutatis-mutandis to the appeals for assessment year 2013-14.

In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 18.2.2018.

Sd/-  
संजय गर्ग  
(SANJAY GARG )

न्यायिक सदस्य/ Judicial Member

**Dated : 18.02.2019**

“आर.के.”

Sd/-  
एन. के. सैनी  
(N.K. SAINI)  
उपाध्यक्ष / Vice President

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