

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI NK PRADHAN, AM

आयकर अपील सं./ ITA No. 3995/Mum/2016

(निर्धारण वर्ष / Assessment Year 2003-04)

आयकर अपील सं./ ITA No. 4823/Mum/2016

(निर्धारण वर्ष / Assessment Year 2011-12)

Amit H. Jhaveri, 412 Neo Corporate Plaza, Ramchandra Lane Extension Kaachpada Malad (W), Mumbai-400 064	Vs.	The Asst. Commissioner of Income Tax, Circle 16(1), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AACPJ3117E		

अपीलार्थी की ओर से / Appellant by	:	Shri Mani Jain, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri R.A. Dhyanani, DR

सुनवाई की तारीख / Date of hearing:	16-05-2019
घोषणा की तारीख / Date of pronouncement :	16-05-2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These appeals filed by the assessee are arising out of the different orders of Commissioner of Income Tax (Appeals)-28 & 30, Mumbai [in short CIT(A)], in appeal No. CIT(A)-28/ACIT16(1)/269/10-11, CIT(A)-

**ITAs No.3995 & 4823/Mum/2016**

30/ACIT19(1)/358/2014-15, CIT(A)-30/ACIT19(1)/357/2014-15, CIT(A)-30/ACIT19(1)/138/2014-15 dated 11.02.2011 & 21.10.2015. The Assessments were framed by the Asst. Commissioner of Income Tax, Circle-16(1) Mumbai (in short ACIT/ITO/ AO) for the A.Ys. 2003-04 & 2010-11 vide dated 30.12.2009, 19.03.2014 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed that the appeals for AY 2003-04 in ITA No. 3995/Mum/2016 is delayed by 112 days and appeal for AY 2011-12 in ITA 4823/Mum/2016 is delayed by 149 days. The assessee has filed condonation petition for both the years contending as under: -

"The applicant Mr. Amit Jhaveri has required to file an appeal against the order of the CIT (Appeals) - 30 on or before 21th February 2016 as he has received the order from the office. The applicant submits that his father Mr. Hemendra Jhaverl aged 85 years was gravely ill and was, in and out of hospitals in the last six months with the latest admission and discharge ending on 11.5.2016 from Wockhardt Hospital, Mira Road, Mumbai. Attached hereto and marked as Ex "A" colly are the following documents of this last hospitalization and the applicant craves leave to rely on other medical records as and when-the same are required as the same are too bul0y to be attached.*

1) Admission Card

2) Discharge Card

3) Letter from Doctor



The applicant was attending his father in person as his mother able to file the appeal in a timely manner due to circumstances beyond his control.”

3. When these facts were pointed out, the learned Sr. Departmental Representative objected for condonation of delay but could not controvert the above cause referred by assessee in its petition. After going through the reasons stated in the petition and supporting affidavit, we are inclined to condone the delay. Similar are the reasons in other years, hence, in that year also, we condone the delay and admit the appeals in both the years.

4. At the outset, the learned Counsel for the assessee stated in both the years the issue is common regarding confirming of addition by CIT(A) on account of addition of accrued interest on loans and investment amounting to Rs. 53,86,280/- in AY 2003-04 and amounting to Rs. 72,60,558/- in AY 2011-12. The learned Counsel for the assessee stated that exactly on similar facts, the Tribunal in earlier year i.e. AY 2002-03 in ITA NO. 4051/Mum/2016 vide order dated 31.01.2017 remitted the issue back to the file of the AO by observing as under: -

“On careful perusal of the order of the Id. CIT(A) in second round of litigation and after hearing the Id. D.R., who supported the appellate order of the Id. CIT(A) , we are of the considered view that the Id. CIT(A) has not passed a speaking and reasoned order in second round of litigation whereby the contentions of the assessee of following consistently cash method of accounting was rejected by the Id. CIT(A) without giving specific and cogent reasons without considering the system of accounting

**ITAs No.3995 & 4823/Mum/2016**

followed by the assessee in the preceding as well subsequent assessment year's, and secondly Id. CIT(A) has not passed speaking and reasoned order wherein no detailed discussions was recorded by learned CIT(A) with regards to various legal disputes raised by the assessee or the counter claims raised by the borrowers in court litigations , which were with various courts of law and also fate/status of these court cases with various forums were not discussed by the learned CIT(A) on specific basis to arrive at decision, hence, we are inclined to set aside and restore this issue to the file of the Id. CIT(A) with a direction to pass a reasoned and speaking order after considering the contentions of the assessee and material on record. Needless to say, the assessee will be allowed to file necessary and cogent evidences and contentions including copies of various petitions and the decisions of court cases along with the relevant evidences to support the averments that the assessee is following cash method of accounting and also with respect to details of disputes, claims and counterclaims w.r.t. various disputes as to the loans advanced by the assessee as well other contentions in it defense. The assessee is also directed to co-operate with the Id. CIT(A) in the proceedings and file all necessary documents in its defense and in the absence of cooperation of the assessee before learned CIT(A), the learned CIT(A) shall be free to pass an order based on material on record. The learned CIT(A) shall grant an



opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. We order accordingly.”

5. When these facts were pointed out, the learned Sr. DR agreed that the matter can be restored back to the file of the CIT(A) for deciding afresh. After hearing both the sides and going through the facts and circumstances of the case and going through the Tribunal's order for AY 2002-03 in assessee's own case, we restore back this issue for both the years to the file of the CIT(A) to decide in term of the directions of the Tribunal in AY 2002-03. Both the orders of CIT(A) are set aside and matter restored back to the file of the CIT(A) for fresh adjudication in both the years.

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

Order pronounced in the open court on 16.05.2019.

Sd/-

(एन. के. प्रधान/ NK PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16. 05.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai