

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1901/MUM/2017
Assessment Year: 2010-11**

3i Infotech Consultancy Services Ltd., Tower No. 5, 3 rd floor to 6 th floor, International Infotech Park, Vashi, Navi Mumbai- 400703.	Vs.	Deputy Commissioner of Income Tax-8(3), Mumbai.
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PAN No. AAACZ3181E
Appellant

Respondent

Assessee by	:	Mr. BhupendraKarkhanis, AR
Revenue by	:	Mr. Abi Rama Kartikiyen, DR

Date of Hearing	:	14/02/2019
Date of pronouncement:		13/05/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax-18, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:
 1. (a) On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal filed by the appellant

without giving an opportunity of being heard in regard to condonation of delay in filing the appeal which is wrong and contrary to the facts and circumstances of the case, the provisions of Income tax Act, 1961, and the Rules made there under.

b) On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal by rejecting the condonation of delay in filing the appeal and reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of Income Tax Act, 1961, and the Rules made there under.

2. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in not deciding the issue on merits and not allowing set off of brought forward business loss and unabsorbed depreciation amounting to Rs.1,56,99,159 of amalgamating company as claimed by the appellant in terms of the scheme approved by the Hon'ble Bombay High Court. The appellant company prays that the said ground of appeal be adjudicated on merits and to be allowed.
3. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in not deciding the issue on merits and in not allowing deduction of Rs.2,29,290- u/s36(1)(va) being delayed employees contribution to Provident Fund but paid before the due date for furnishing return of income as per section 139(1) of the Act. The appellant company prays that the said ground of appeal be adjudicated on merits and to be allowed.
4. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in not deciding the issue on merits and in disallowing Rs.2,96,440/- being prior period expenses. The appellant company prays that the said ground of appeal be adjudicated on merits and to be allowed,
5. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in not deciding the issue on

merits and not deleting the additions of sum of Rs.17,069/- being contractual receipt on account of un-reconciled AIR and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of Income Tax Act, 1961 and the Rules made there under. The appellant company prays that the said ground of appeal be adjudicated on merits and to be allowed.

3. We begin with the 1st ground of appeal. Briefly stated, the facts are that there has been a delay of 501 days in filing the appeal by the assessee before the Ld. CIT(A). In the order dated 18.01.2017, the Ld. CIT(A) dismissed the condonation of delay submitted by the assessee on the following ground :

“There is a delay of 501 days as calculated by the appellant in their letter dated 05.08.2014. Assessing Officer was heard on 30.03.2014 as per Form No. 35. However, in the affidavit the appellant has mentioned that order was served on 30.03.2012. This itself shows that the affidavit is prepared with afterthought and contains wrong statement on oath. It is further seen that the due date of filing appeal was 30.04.2013 as per Form No. 35. Once again in the affidavit the appellant has stated on oath that the due date of filing appeal was 29.04.2014 on oath. This also proves that the affidavit is an afterthought and also contains wrong facts. It is further seen that the High Court order was dated 25.03.2011 and the assessment under reference is AY 2012-13. Therefore, the contention of the appellant that the documents were not available is baseless. Not only that return of income was filed on 29.09.2010 declaring Nil income, was subsequently revised on 07.08.2011 declaring total income of Rs.6.74 cr. This also shows that the appellant has not made true and correct return of income, nor filed appeal in time.

In view of the above the affidavit is found:

a Full of Contradiction

- b General in nature
- c After thought
- d To covering up intentional deficiencies
- e Only self-serving document
- f Lastly, in spite of having Team of Professionals for Audit, Taxation and High Court matter.

Accordingly, the affidavit is rejected because the appellant has not made out any concrete case of delay of each day and merely made averments which was not reliable and generic. I therefore dismiss the appeal at the admission stage itself. Since the appeal is not admitted, Ground No. 1 to 4 are not adjudicated.”

4. Before us, the Ld. counsel of the assessee submits that the affidavit dated 04.08.2014 filed by the appellant before the Ld. CIT(A) should have been considered. Referring to the said affidavit, the Ld. counsel submits that the regular assessment u/s 143(3) was completed vide order dated 28.03.2013, which was received on 30.03.2014 and the appeal was to be filed by 29.04.2014. It is argued that the assessee-company had applied for amalgamation of Delta Services (I) Pvt. Ltd. and Manipal Informatics Pvt. Ltd. on 18.10.2010. It filed its return of income for the AY 2010-11 on 27.09.2010 declaring total income at Rs.7,48,42,483/-. The Bombay High Court approved the scheme of amalgamation between Delta Services (I) Pvt. Ltd. and Manipal Informatics Pvt. Ltd. on 25.03.2011 w.e.f. 01.04.2009. After the said amalgamation, in terms of order of Bombay High Court, the appellant-company revised its return of income and set off the accumulated losses and unabsorbed depreciation of amalgamating company. Subsequently, the case of the appellant-company was selected for scrutiny. It is stated by him that the respective staff who revised the return of income left the

appellant-company prior to the commencement of assessment proceedings. As such details/documents required for the purpose of hearing could not be gathered properly and therefore, the case was not presented in efficient manner. It is stated that in the assessment order passed u/s 143(3), the AO disallowed the set off of brought forward loss and accumulated depreciation and certain other expenses and initiated penalty proceedings u/s 271(1)(c). The Ld. counsel submits that the appellant-company had not filed an appeal against the quantum order u/s 143(3) in the absence of proper documents/details as well as guidance from its then tax consultant. Subsequently, the company received show cause notice dated 26.08.2013 as to why penalty u/s 271(1)(c) should not be levied in respect of additions made in assessment order passed u/s 143(3). The appellant-company appointed new consultant for representing its matter in penalty proceeding. It is stated that the details required for the purpose of representation were not available with the company due to change in management as well as staff and company could not recover any relevant document from its old tax consultant. The new tax consultant obtained the copies of documents required by them from Income Tax Department. It is further submitted by the Ld. counsel that based on available documents, representations were made before the AO. However, the AO did not accept the contentions of the tax consultants and levied penalty in respect of various additions. The company has preferred an appeal against the penalty levied u/s 271(1)(c) in respect of additions made. The new tax consultant advised the staff of the company to file an appeal against the order u/s 143(3). However, the said staff also left the organization and

in the absence of adequate details, appeal remained to be filed. Subsequently, the new tax consultant again reminded the company to prefer an appeal against the order u/s 143(3) in the light of the decision of the Chennai ITAT in the case of Mayajaal Entertainment Pvt. Ltd. and the management of the company decided to file the captioned appeal. Thus it is stated that the delay in filing appeal is not intentional and only circumstantial and has not benefited the company in any manner.

Stating the above, the Ld. counsel submits that the delay of 501 days in filing the appeal before the Ld. CIT(A) be condoned. In this regard reliance is placed by him on the order of the Tribunal "A" Bench, Mumbai in the case of Shri Anand Raj Anand v. ACIT (ITA No. 4940/Mum/2012 for AY 2007-08).

Further, the Ld. counsel draws our attention to the Paper Book (P/B) filed by the assessee containing (i) Letter requesting for condonation of delay in filing appeal against order u/s 143(3) dated 05.08.2014, (ii) Affidavit dated 04.08.2014 of Mr. Padmanabhan Iyer, (iii) Written submission dated 06.01.2017 filed before Commissioner of Income Tax (Appeals), (iv) Further written submission dated 13.01.2017 filed before Commissioner of Income Tax (Appeals), (v) Order of Hon'ble Bombay High Court dated 25.03.2011 approving the scheme of amalgamation of 3i Infotech Consultancy Services Ltd. with M/s Delta Services Limited and M/s Manipal Informatics Private Limited, (vi) Scheme of Amalgamation of 3i Infotech Consultancy Services Limited with M/s Delta Services Limited and M/s Manipal Informatics Pvt. Ltd. and (vii) Order of Hon'ble Mumbai ITAT deleting

penalty levied u/s 271(1)(c) of the Act claiming set off of brought forward unabsorbed depreciation in appellant's own case dated 17.10.2016.

5. On the other hand, the Ld. DR refers to the order of the Ld. CIT(A) and submits that the condonation of delay of 501 days has rightly been rejected.

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

In the instant case, the AO while passing the assessment order u/s 143(3) has disallowed unabsorbed depreciation and unabsorbed business loss totaling to Rs.1,56,99,159/-. The unabsorbed depreciation stood with the amalgamating companies viz. M/s Manipal Informatics Pvt. Ltd. and Delta Services Ltd. The said companies stood amalgamated with the appellant w.e.f. 01.04.2009 (appointed date). The Hon'ble Bombay High Court sanctioned the scheme on 25.03.2011 as under:

“With effect from the Appointed date and upon the Scheme becoming effective, any tax credit, advance/prepaid taxes, tax deducted at source, the unabsorbed depreciation and losses if any of the Transferor Companies shall be treated as any tax credit, advance/prepaid taxes, tax deducted at source, the unabsorbed depreciation and losses of the Transferee Company as on the Appointed Date and the Transferee Company shall be entitled to claim in its tax return or in the statutorily prescribed manner the tax credit, advance/prepaid taxes, tax deducted at source, the unabsorbed depreciation and losses of the Transferor Company and to revise its tax returns and including any loss, returns, related tax deduction certificates and to claim refund, advance tax credit etc. accordingly.”

6.1 We further find that the ITAT 'A' Bench, Mumbai in assessee's own case for the same assessment year i.e. 2010-11 has dismissed the appeal filed by the revenue against the order of the Ld. CIT(A) deleting the penalty levied by the AO u/s 271(1)(c) of the Act.

6.2 In view of the facts delineated at para 6 and 6.1 hereinabove we condone the delay of 501 days in filing the appeal before the Ld.CIT(A). In our considered opinion, having regard to the circumstances explained by the appellant, it would be in the fitness of things that the various grounds raised by the assessee are restored back to the file of the Ld. CIT(A) for an adjudication afresh on merits. Needless to say, the Ld. CIT(A) shall allow the assessee a reasonable opportunity of being heard and only thereafter, adjudicate the grounds in accordance with law.

7. In the result, the appeal of the assessee is allowed for statistical purposes as above.

Order pronounced in the open Court on 13/05/2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/05/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai