

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 6823/Mum/2016
Assessment Year : 2011-12

M/s.Teej Impex Pvt. Ltd., 302, Devkrupa Building, 28, Raichur Street, Masjid Bunder, MUMBAI [PAN : AABCT9976A]	Vs.	Addl. Commissioner of Income Tax, Range-7(3), MUMBAI
(Appellant)		(Respondent)

Appellant by : Shri Bhupendra Shah, AR
Respondent by : Shri Rajeev Gubgotra, DR

Date of Hearing : 04-09-2019	Date of Pronouncement : 16-09-2019
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ORDER

PER RAJESH KUMAR, A.M:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-14, Mumbai, dated 18-10-2016.

2. Brief facts of the case are that, assessee is a company, engaged in the business of manufacturing printed packaging material, filed its return of income on 28-09-2011, declaring loss of Rs.8,37,11,627/- and the assessment was completed by the Assessing Officer (hereinafter called Ld.AO) u/s.143(3)

of the Income Tax Act (Act) on 28-03-2014, determining loss of Rs.4,63,70,252/-. Aggrieved with the same, assessee preferred an appeal before the CIT(A).

3. Before the Ld.CIT(A), assessee raised various grounds of appeal, stating that the AO has disallowed interest expenses of Rs.2,71,00,131/-, remission of liability Rs.52,35,000/- and u/s.14A of the Act as per rule 8D of the Income Tax Rules Rs.3,94,494/- without appreciating facts of the case.

4. In this case the notice of demand has been received by the assessee on 29-03-2014 and therefore the assessee was due to file the appeal by 28-04-2014. However, the assessee has filed the appeal on 13-10-2014 and there is a delay of 166 days in filing the appeal. For that, assessee filed condonation petition before Ld.CIT(A), by stating as under:

“With reference to above, the order u/s.143(3) of the Act was served on 29-03-2014 and due date for filing the appeal was 28-04-2014. The assessment order misplaced through our office bearer on account of renovation of office and the mistake was came to the knowledge of the auditor of the company during the course of audit regarding provisions of taxation made and earlier years completed assessment liability written off. After enquiry and looking to old record the same is available in folder and hence the company filed appeal immediately. There was a reasonable cause for abnormal delay in filing the appeal on account of mistake by our employee and may kindly be condoned due to unavoidable circumstances beyond the control of the assessee company and oblige.”

5. Taking the facts and circumstances of the case into consideration, Ld.CIT(A) dismissed the appeal of assessee stating that - *the submissions made by the assessee are not*

convincing in nature and devoid of any evidence to condone the substantial delay in filing the appeal.

6. At the outset, Ld.Counsel for the assessee submitted that the case of the assessee is squarely covered by the order of the Tribunal in earlier years. The Ld.Counsel submitted that Ld.CIT(A) dismissed the appeal of assessee on account of limitation as the appeal was filed with a delay of 166 days without deciding the issues on merits. The Ld.AR therefore prayed that the necessary relief may kindly be granted to the assessee as the all the issues are fully covered in favour of the assessee.

7. The Ld.DR, on the other hand, contended that the assessee's appeal was barred by limitation before the Ld.CIT(A) and the delay was not explained with cogent reasons. Ld.DR therefore submitted that the Ld.CIT(A) has rightly dismissed the appeal without condoning the delay. The Ld.DR prayed that the order of CIT(A) is reasoned and speaking one and deserved to be upheld.

8. After hearing both the parties and perusing the material on record, we observe that the appeal of the assessee is dismissed in *liminie* for late filing by 166 days and the merits of the case were not touched at all. The case of the assessee is also covered its favour by the coordinate bench in its own case. Under these circumstances we are of the view that the matter should be restored to the file of CIT(A) with a direction

that the CIT(A) will consider the condonation of delay and if delay is condoned , then decide the issue on merits as per law. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 16th September, 2019

Sd/-
(MAHAVIR SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 16-09-2019

TNMM

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), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

: 5 :

ITA No. 6823/Mum/2016

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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