

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President, KZ]**

I.T.A. No. 921/Kol/2019
Assessment Year: 2011-12

M/s. Dawsen Infotech Pvt. Ltd.....Appellant
2, Hare Street, 5th Floor,
Kolkata - 700 001.
[PAN: AABCD 3435 E]

VS

Income Tax Officer.....Respondent
Ward - 6(1), Kolkata,
Kolkata - 700 069.

Appearances by:

Shri Soumitra Choudhury, Advocate appearing on behalf of the Assessee.
Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : September 26, 2019

Date of pronouncing the order : October 23, 2019

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 2, Kolkata dated 29.08.2017 passed ex-parte whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is a information & software technology company. The return of income for the year under consideration was filed by it declaring a total income at Nil. During the course of assessment proceedings, it was noticed by the AO that there was a difference of Rs. 19,39,995/- in the increase in 'Work in Progress' as shown by the assessee in the balance sheet and as shown in the profit & loss account. The assessee therefore was called upon by the AO to explain the said difference. In spite of sufficient opportunity afforded by the AO, the assessee failed to offer any explanation. The AO therefore proceeded to complete the assessment ex-parte to the best of his judgement on the basis of material available

on record. In the assessment so completed u/s 144 vide an order dated 18.03.2014, addition of Rs. 19,39,995/- was made by the AO to the total income of the assessee on account of increase in 'Work in Progress'.

3. Against the order passed by the AO u/s 144, an appeal was preferred by the assessee before the Ld. CIT(A). There was however a delay of 55 days on the part of the assessee in filing the said appeal before the Ld. CIT(A). In this regard, an application was filed by the assessee seeking condonation of the said delay on the ground that its accountant had left his work without giving any notice and the relevant papers were kept by him in his personal drawer. This explanation offered by the assessee for delay in filing the appeal was found to be vague and evasive by the Ld. CIT(A). He held that it was a case of gross negligence, inaction and laches on the part of the assessee and in the absence of any sufficient case, the appeal filed by the assessee was liable to be dismissed as barred by limitation. He also noted that there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the appeal of the assessee for hearing from time to time and the said appeal of the assessee was liable to be dismissed for non-prosecution also. He accordingly dismissed the appeal of the assessee vide his appellate order dated 29.08.2017 passed ex-parte and aggrieved by the same, the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As rightly submitted by the learned counsel for the assessee, there was a delay of 55 days on the

part of the assessee in filing the appeal before the Ld. CIT(A) and since the said delay was explained by the assessee in the application for condonation by stating that its accountant had left his work without giving any notice and the relevant papers were kept by him in his personal drawer, the Ld. CIT(A) was not justified in rejecting the application filed by the assessee for condonation of delay and dismissing the same as barred by limitation by holding that the explanation offered by the assessee did not constitute a sufficient cause. It is a well settled position of law that the expression 'sufficient cause' is to be construed liberally in order to advance the substantial interest of justice and not strictly to defeat the very purpose as done by the Ld. CIT(A). In my opinion, the reason given by the assessee in the application filed before the Ld. CIT(A) for condonation of delay constituted a sufficient case and the Ld. CIT(A) ought to have condoned the said delay which was only of 55 days.

5. As regards the non-compliance on the part of the assessee during the course of assessment proceedings before the AO as well as during the course of appellate proceedings before the Ld. CIT(A), the learned counsel for the assessee has made an attempt to explain the same. Although the said explanation is not supported by any cogent evidence, I am of the view that one more opportunity of being heard deserves to be given to the assessee in the interest of justice subject to imposition of cost of Rs. 5,000/-. I accordingly direct the assessee to pay a cost of Rs. 5,000/- to the department and subject to the said payment, the impugned order passed by the Ld. CIT(A) ex-parte, is set aside and the matter is restored to the file of the AO for deciding the same afresh after giving the assessee on more opportunity of being heard. As undertaken by the learned counsel for the assessee, the assessee shall make due

compliance before the AO and shall extend all the cooperation in the order to enable the AO to complete the assessment afresh expeditiously.

6. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 23rd October, 2019.

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 23/10/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Dawsen Infotech Pvt. Ltd., 2, Hare Street, 5th Floor, Kolkata – 700 00.
2. ITO, Ward-6(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata