

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. No: 508/AHD/2013 & 1180/AHD/2014
(Assessment Year: 1998-99)**

M/s.Baldev Ship Breakers Pvt. Ltd. Shastrinagar, Bhavnagar 364001	V/S	The JCIT, Spl. Range-II, Rajkot and ACIT, Circle-1, Bhavnagar
(Appellant)		(Respondent)

**Appellant by : Shri Parimal Singh, AR
Respondent by : Shri L.P. Jain, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 12-07-2019
Date of Pronouncement : 10 -10-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These two appeal filed by the Assessee is directed against the order of the Ld. CIT(A), Ahmedabad dated 19.05.2004 and 06.02.2014 pertaining to A.Y. 1998-99 and following grounds have been taken:

1. The learned CIT(A) has erred in law and on facts by passing ex pane order without granting of a great opportunity of being heard to the appellant.

- 2. The Id. CIT(A) has erred in law and on facts in confirming the action of Id. AO in disallowing Usance interest amount of Rs. 50,01, 450/- u/s 40(a)(i) of the Act, paid to non-resident supplier of ship on account of credit facility availed from the said supplier of ships.*
- 3. The learned CIT(A) has further erred in law in not appreciating the applicability of provisions of section 10(15)(iv)(c)/(f) of the Act while confirming the action of Id. AO in disallowing interest amount under section 40(a)(i) of the Act.*
- 4. The learned CIT (A) has erred in law and on facts confirming the action of learned AO in making addition of Rs.29923170/- under section 68 of the Act.*
- 5. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
- 6. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234B/C of the Act.*
- 7. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s 271(1)(c) of the Act.*

2. As we can see, both the lower authorities passed an ex parte order and Ld. Assessing Officer stated in his order that assessee is not available at the given address. Therefore, notice was served by affixture and passed order on the basis of material available with the Assessing Officer. Thereafter, assessee filed an appeal before the Id. CIT(A) and Ld. A.R. on behalf of the assessee appeared before the Id. CIT(A) and sought adjournment but could not file any submission in support of the appeal. Thereafter, Id. CIT(A) passed an order on the basis of material available on record.
3. Now assessee has filed appeal before us and there is a delay of 827 days in filing of appeal before the ITAT. The assessee stated that company had become bankrupt. As a result of bankruptcy, assets of the assessee-company were taken over by the bank from which, assessee-company had availed credit

- facilities. Bank accounts of assessee-company were also freezed. Eventually, assets taken over by the bank were liquidated by the bank in order to recover its outstanding dues. Thus, the assessee-company was facing tough times.
4. Somewhere in January 2013, it was learnt that penalty order for the Assessment Year 1998-99 has been passed. Since the assessee-company was not having a copy of such penalty order, the assessee-company moved an application for getting a copy of such penalty order on 15.01.13 consequent to which, copy of penalty order was supplied to the assessee-company. When such penalty order was thoroughly examined, it was realized that even the quantum appeal for the year under consideration has been dismissed by the learned Commissioner of Income-tax (Appeals).
 5. As we can see that company was shut down and facing several cases but in the circumstances, it was duty of the key person of the company who was looking after the matter of the company to follow up cases filed by the company. But in this case, it was not done so and assessee company remained in active in order to follow up the appeal.
 6. But after seeing peculiar circumstances of the case and in the interest of the justice, we set aside this matter to the file of ld. CIT(A) to decide afresh after giving an opportunity of being heard to the assessee company. The assessee company is directed to deposit a cost of Rs. 50,000/- with the Department as assessee company has wasted the time of the department by not following its appeal and cost of Rs. 50,000/- shall be deposited within 60 days from the receipt of this order and on production of receipt of Rs. 50,000/-, ld. CIT(A) shall proceed with the appeal. However, we do not want to comment on merit

of the case and needless to mention here that ld. CIT(A) will pass order after considering all the submissions or documents to be filed by the assessee company.

7. In the result, both the appeals of the Assessee are allowed.

Order pronounced in Open Court on	10 - 10- 2019
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Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 10 /10/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad