

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.173 & 174/Ind/2018
Assessment Years: 2013-14 & 2014-15

M/s Mahalaxmi Investment and Trading Private Limited, C/o SV Agrawal & Associates Dadi Dham, 24 Joy Builders Colony, Old Palasia, Near Refeal Tower, Indore	Vs.	DCIT Ratlam
(Appellant)		(Respondent)
PAN No.AADCM9703G		

Assessee by	Shri S.N. Agrawal, CA
Revenue by	Shri Puneet Kumar, Sr. DR
Date of Hearing	12.12.2019
Date of Pronouncement	18.12.2019

ORDER

PER MANISH BORAD, AM

The above captioned appeals filed at the instance of the assessee pertaining to Assessment Years 2013-14 & 2014-15 are directed against the orders of Commissioner of Income Tax(Appeals), (in short 'CIT(A)'] Ujjain dated 19.12.2017 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 30.03.2016 framed by DCIT, Ratlam.

2. Assessee has raised following grounds of appeals;

ITA No.173/Ind/2018 for A.Y. 2013-14

1.1 That on the facts and in the circumstances of the case and in law the Ld. CIT(A) grossly erred in not condoning the delay in filing of appeal by the appellant to exclude the amount of sales tax subsidy from its total income even when the amount of sales tax subsidy was exempt as capital receipt in view of the direct decision of Hon'ble Apex Court without properly appreciating the reason for delay in filing of the appeal.

1.2] That on the facts and in the circumstances of the case and in law the Ld CIT(A) grossly erred in not condoning the delay in filing of appeal by the appellant to exclude the amount of sales tax subsidy from its total income even when Circular No 14 issued by Hon'ble CBDT clearly states that officers of the department must not take advantage of ignorance of the assessee as to his rights. In the facts of the present case, the Ld CIT (A) grossly erred in not condoning the delay in filing of appeal even when the appellant inadvertently and in ignorance of law offered sales tax subsidy as its income which was however exempt from tax as it was a capital receipt.

2] That ,on the facts and in the circumstances of the case and in law the Ld.CIT(A) erred in not deciding the ground of appeal as taken for challenging the addition of an amount of Rs'7,296/ to the total income of the appellant on account of Employees Contribution to the Provident Fund even when the said amount was paid during the previous year and in any case before the due date of filing of the, return of total income.

3] That on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in not deciding the ground of appeal as taken for challenging the

disallowance of an amount of Rs 1,00,000/- out of purchase expenses purely on ad-hoc basis without pointing out any defects in the books of accounts as maintained by the appellant.

4.1] That on the facts and in the circumstances of the case and in law the Ld CIT(A) grossly erred in not excluding the amount of sales tax subsidy of Rs 50,47,045/- from the total income of the appellant even when the same is exempt from tax being capital in nature and thus, is not chargeable to tax under the Income Tax Act.

4.2] That on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in not entertaining the claim of the appellant to exclude the amount of sales tax subsidy from the total income of the appellant merely for the reason that the amount of sales tax subsidy was voluntarily offered by the appellant as its income even when the said amount of sales tax subsidy was not liable to tax as income and the amount of sales tax subsidy was also treated by the Ld CIT(A) himself as a capital receipt in earlier years.

5. The appellant reserve its right to add, alter, modify or delete any grounds of appeal on or before the date of final hearing.

ITA No.174/Ind/2018 for A.Y. 2014-15

1.1 That on the facts and in the circumstances of the case and in law the Ld. CIT(A) grossly erred in not condoning the delay in filing of appeal by the appellant to exclude the amount of sales tax subsidy from its total income even when the amount of sales tax subsidy was exempt as capital receipt in view of the direct decision of Hon'ble Apex Court without properly appreciating the reason for delay in filing of

the appeal.

1.2] That on the facts and in the circumstances of the case and in law the Ld CIT(A) grossly erred in not condoning the delay in filing of appeal by the appellant to exclude the amount of sales tax subsidy from its total income even when Circular No 14 issued by Hon'ble CBDT clearly states that officers of the department must not take advantage of ignorance of the assessee as to his rights. In the facts of the present case, the Ld CIT (A) grossly erred in not condoning the delay in filing of appeal even when the appellant inadvertently and in ignorance of law offered sales tax subsidy as its income which was however exempt from tax as it was a capital receipt.

2.1] That on the facts and in the circumstances of the case and in law the Ld CIT(A) grossly erred in not excluding the amount of sales tax subsidy of Rs 93,81,078/- from the total income of the appellant even when the same is exempt from tax being capital in nature and thus, is not chargeable to tax under the Income Tax Act.

2.2] That on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in not entertaining the claim of the appellant to exclude the amount of sales tax subsidy from the total income of the appellant merely for the reason that the amount of sales tax subsidy was voluntarily offered by the appellant as its income even when the said amount of sales tax subsidy was not liable to tax as income and the amount of sales tax subsidy was also treated by the Ld CIT(A) himself as a capital receipt in earlier years.

3. The appellant reserve its right to add, alter, modify or delete any grounds of appeal on or before the date of final hearing.

3. At the outset, Ld. counsel for the assessee submitted that for both the assessment years i.e. A.Y.2013-14 & 2014-15, Ld. CIT(A) has dismissed assessee's appeals on account of delay in filing the appeal and there is no finding on merits of the case. He further submitted that there was a reasonable cause due to which there was a delay for filing the appeal before the Ld. CIT(A) and if the same had been condoned, the assessee had fair chance in succeeding in the appeals. He further prayed for condoning the delay before the Ld. CIT(A) and restoring all the issue raised on merits in this appeal to Ld. CIT(A) for afresh adjudication.

4. Per Contra Ld. Departmental Representative (DR) opposed to the request made by the Ld. counsel for the assessee.

5. We have heard rival contentions and perused the records placed before us. Though the assessee has raised various grounds on merits for A.Ys. 2013-14 & 2014-15 challenging the addition made by the Ld. AO, we, observe that due to the technical reason i.e. for delay in filing the appeal before the Ld. CIT(A), assessee's case was not decided on merits and the appeals were dismissed.

6. Before us, Ld. counsel for the assessee requested for condoning the delay made in filing appeal before Ld. CIT(A). Perusal on records shows that due to the mistake on the part of the accountant of the assessee who did not inform about the assessment order passed u/s 143(3) of the Act to the management of the company, resulted in delay of one year in filing the appeal.

7. An affidavit in support of this contention is placed on record wherein it has been submitted that the accountant, Mr. Paras Jain did not hand over the assessment order u/s 143(3) of the Act to the management of the company with a *bona fide* belief that there is a meager addition of Rs.1,40,956/-. It is also contended before us that the assessee had fair chances of succeeding if the grounds raised on merits had been adjudicated.

8. We, therefore, in the larger interest of justice and being fair to both the parties condone the delay in filing the appeals before the Ld. CIT(A) and restore all the issues raised on merits for both assessment years i.e. 2013-14 & 2014-15 to Ld. CIT(A) for afresh adjudication. Needless to mention that proper opportunity of being heard to be provided to the assessee and assessee is also directed to be compliant to notices and should not take adjournment unless otherwise required for reasonable cause.

9. In the result, both the appeals of the assessee for A.Ys. 2013-14 & 2014-15 are allowed for statistical purposes.

The order pronounced in the open Court on 18.12.2019.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

दिनांक /Dated : 18th December, 2019

Patel/PS

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore