

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC – B' Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No. 882/Hyd/2019
Assessment Year: 2006-07

Kad Entertainment (Ind) P Ltd. No.503, Kanchanjunga Complex King Koti road Hyderabad	Vs	Income Tax Officer Ward 2(1) Hyderabad
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PAN: AABCK3884G
(Appellant)

(Respondent)

For Assessee :	Shri Laxmi Niwas Sharma, AR
For Revenue :	Shri DJP Anand, DR

Date of Hearing:	28.11.2019
Date of Pronouncement:	10.01.2020

ORDER

This is assessee's appeal for the A.Y. 2006-07 against the order of CIT(A)-1, Hyderabad dated 26.03.2019.

2. Brief facts of the case are that the assessee company engaged in the business of entertainment industry, filed its return of income for the A.Y. 2006-07 on 25.11.2006 admitting total income of Rs.9,99,013/-. The same was processed u/s 143(1) of the Income Tax Act, 1961 (the Act).

2.1. Subsequently, it was noticed that the assessee has adopted Net Profit of Rs.24,62,192/- as per Profit and Loss a/c and has deducted an amount of Rs.41,57,000/- from the same as 'income from other sources' and considered it separately, and in doing so, it has resulted in business loss of Rs.16,94,808/- to which the assessee added depreciation as per books and deducted depreciation as per the I.T.Act resulting in business income of Rs.9,99,013/-. However, while computing total income, assessee ignored to

add income of Rs.41,57,000/- from other sources to the business income of Rs.9,99,013/-. For this reason, the AO reopened the assessment by issuance of a notice u/s 148 of the Act. During the reassessment proceedings u/s 143(3) r.w.s. 147 of the Act, various information was called for which was furnished by the assessee. The AO perused the same and noticed that the assessee has incurred certain expenditure totalling to Rs.33,13,506/-, but the assessee has not submitted proof of TDS on the said payments. Hence, the AO disallowed the same and brought it to tax. Further he also observed that certain cash payments to the extent of Rs.35,000/- were made, but since the assessee could not give any convincing reasons for the said payments in cash, the AO brought it to tax. Thus, the assessment proceedings were concluded by arriving at the assessable income of Rs.43,47,516/-. Aggrieved, the assessee filed an appeal before the Ld.CIT(A) with a delay of 2242 days. Before the CIT(A), the assessee challenged the validity of assessment proceedings u/s 148 of the Act on the ground that the grounds on which assessment was reopened are not the grounds on which additions have been made and, therefore, the re-assessment proceedings u/s 147 of the Act are not sustainable. The CIT(A), however, observed that the delay of 2242 days is not properly explained by the assessee, and, therefore, she dismissed assessee's appeal without condoning the delay. Thus, the merits of the grounds of appeal raised by the assessee were not gone into.

2.2. Aggrieved, the assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

“1. The learned CIT(A) erred in facts and law while passing the order u/s 250 of the I.T.Act, 1961 (Act).

2. The learned CIT(A) erred in stating that the appellant has no sufficient cause for not presenting the appeal in time and not condoning the delay in filing of appeal ignoring that appellant had sufficient cause for not presenting the appeal in time.

3. The learned CIT(A) erred in ignoring that while interpreting the word 'sufficient cause', due regard should be given to merits of the case.

4. The learned CIT(A) erred in dismissing the appeal in limine ignoring that prima facie the appellant had very strong case on merits as the issue is covered in favour of appellant by judgments of various high courts (including jurisdictional high court) and tribunals (including jurisdictional tribunal).

5. *The learned CIT(A) erred in ignoring that once the issue for which reasons have been recorded for reopening cases to exist, AO cannot independently assess any other item which does not form part of reasons recorded for reopening.*

6. *For these reasons and any other grounds which may be raised on or before hearing of the appeal.”*

2.3. The Ld.Counsel for the assessee submitted that assessee’s business was closed down in August, 2010 and all of his employees and staff had left the company, and it is thereafter that the assessee received a notice from the Income Tax department for reopening of the assessment for the year 2005-06 (AY 2006-07). It was submitted that at that stage, the health of the M.D. was deteriorating due to mental stress and since he was not well both health wise and financially, it was in Feb., 2018 when the M.D. recovered partially and was able to perform normally, and when he received one more notice from Tax Recovery Officer, he realised that he has to file the appeal before the CIT(A) and accordingly he filed the same. He submitted that assessee has a strong case on merits as the re-assessment was not based on any reasons for which the assessment was reopened but the disallowance was of expenditure which has no live link at all with the reasons for reopening. Therefore, the delay according to him, is not wilful or wanton. He, thus prayed that the delay may be condoned and the issue be decided on merits.

2.4. The Ld.DR however, opposed the condonation of delay stating that the assessee has not given proper reasons for filing of the appeal with a delay of nearly 7 years and the reasons given by the assessee are only health problems of the M.D. such as hypertension, mental stress etc. and no medical certificates are also filed and, therefore, it do not in any way justify the huge delay of nearly 7 years.

3. Having regard to the rival contentions and material placed on record, I find that the present appeal is against the order of CIT(A) in refusing to condone the delay of 2247 days. The Hon’ble Supreme Court in the case of Collector, Land Acquisition vs. Mst.Katiji and others (1987) reported in 167 ITR 471 (SC) vide judgement dated 19.02.1987, has held that where a party

do not benefit by not filing the appeal in time, and the party has merit in its case, such circumstances should be considered for condoning the delay. In the case before us, admittedly, the assessment was reopened to examine the taxability of income from other sources, along with the business income whereas in the re-assessment proceedings, the disallowance is only of the payments which are made without making any TDS. Therefore, there appears to be a prima facie case in favour of the assessee. However, there is an inordinate delay of 7 years in filing of the appeal before the CIT(A), and the reasons given by the assessee such as ill health etc. are not acceptable without any evidence. But, in the peculiar circumstances of the case wherein the assessee appears to have a case on merits, and in the interest of justice, I am inclined to condone the delay subject to the assessee making a payment of cost of Rs. 10,000/- to the P.M's Relief Fund on or before 31st January, 2020. The issues are therefore set aside to the file of CIT(A), for deciding the grounds raised by the assessee on merits. Needles to mention that the assessee shall be given a fair opportunity of hearing.

4. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 10 /01/2020.

Sd/-
(P. Madhavi Devi)
Judicial Member

dated : 10/01/2020

**gmv*

Copy to:

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- 2 ITO, Ward 2(1), Hyderabad.
- 3 CIT (A)-1, Hyderabad
- 4 Pr. CIT – 2, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

1	Draft dictated on	01.01.2020
2	Draft placed before the author	03.01.2020
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4	Draft approved by second Member	
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