

**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH
MUMBAI**

**BEFORE SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.7079/Mum/2017
(Assessment Year :2012-13)
&**

**ITA No.7080/Mum/2017
(Assessment Year: 2012-13)**

M/s. Shankarlal & Sons SP Business Centre SP1, Prakash Chamber, 77, Nagindas Master Road Fort, Mumbai – 400 023	Vs.	Income Tax Officer, 17(3)(3) R.No.111A, Aaykar Bhavan MK Road, Mumbai – 400 020
PAN/GIR No.AAGFS6906B		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri V. Vinodkumar
Date of Hearing	05/02/2020
Date of Pronouncement	14/02/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

ITA No.7079/Mum/2017

This appeal in ITA No.7079/Mum/2017 for A.Y. 2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-28, Mumbai in appeal No.CIT(A)-28/IT-872/ITO 17(3)(3)/2015-16 dated 24/08/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as Act)

dated 29/03/2015 by the Id. Income Tax Officer – 17(3)(3), Mumbai (hereinafter referred to as Id. AO).

ITA No.7080/Mum/2017

This appeal in ITA No.7079/Mum/2017 for A.Y. 2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-28, Mumbai in appeal No.CIT(A)-28/IT-873/ITO 17(3)(3)/2015-16 dated 24/08/2017 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The preliminary ground raised by the assessee in ITA No.7079/Mum/2017 is that the Id. CIT(A) had erred in dismissing the appeal of the assessee by treating it as 'not admitted' without appreciating reasonable cause adduced by the assessee.

3. None appeared on behalf of the assessee and we find that the Id. CIT(A) had also passed an *ex parte* order. We also find that even before the Assessing Officer, none appeared on behalf of the assessee and assessment was ultimately framed u/s.144 of the Act. We find as against the return income of Rs.2,540/-, the assessment was completed by determining total income at Rs. 6,76,98,750/- making various additions towards purchases, unsecured loans and disallowance of interest payment etc., We find that before the Id. CIT(A), the appeal was time barred by 270 days. We find that assessee had given the following reasons for condonation of delay before the Id. CIT(A):-

“The assessment under section 144 was completed in the case of appellant on 29-03-2015 by the Income Tax Officer 17(3)(3), Mumbai Order for the same was received at the address of the appellant on 01-04-2015. However, the same could not reach the partners of the appellant till 18th January, 016.

That appeal against the same was to be filed on or before 01-05-2015 but the same was not filed due to various adverse circumstances which was not under the control of the appellant and which severally affected the working of the appellant during the period from 01-01-2015 onwards till date.

That appellant's registered office was situated at residential premises of one of its partner and its business address was situated at office premises at Lower Parel owed by an associate concern M/s. Vigneshwara Exports Ltd., The said M/s. Vigneshwara Exports Limited had taken various credit facilities, inter alia from Punjab & Sind Bank. These facilities were secured against various assets of the said company-appellant firm were also promoters of the said company Vigneshwara.

That somewhere around 2011-12 the account of said Vigneshwara with the bank went under NPA and from the period onwards the banks were severally pressuring the said Vigneshwara and its promoters to repay the same. However, due to heavy losses the same could not be done. Accordingly, the bank, including Punjab & Sind Bank, started proceedings to take possession of various properties of said Vigneshwara and its promoters. It may also be mentioned here that apart from Banks, various private parties/creditors were also behind the promoters for -recovery of their dues.

That on 17-06-2014, the registered office of the appellant was taken over by the said Punjab & Sind Bank and appellant was left without a proper address after that. This also resulted in appellant nor receiving any notices/communications from the assessing officer regarding assessment proceedings (Evidence enclosed).

Due to mounting losses in the said Vigneshwara, intense follow ups from various creditors and banks, the appellant firm and its partners were not able to properly attend various routine business matters including the assessment proceedings under the Income Tax Act which resulted in non-compliance and heavy additions. Kindly note that the partners of the appellant firm were also heavily preoccupied in various legal proceedings including under section 138 of the Negotiable Act.

It may kindly be noted that all the premises belonging to the appellant, its partners and the said Vigneshwara were physically taken over by the banks during June 2014 to October 2015 (Evidence enclosed).

Kindly note that under all these adverse conditions, appellant firms not only could not comply with the assessment requirements, it also failed to file on appeal against the assessment order within the time allowed under the Act. Your appellant assures that additions made under the order could have been completely avoided with the proper compliance.

That now your appellant humbly prays that in the interest of justice, an opportunity may please be given to the appellant and the appeal of appellant, though delayed, may please be admitted by condoning the delay in filing of the same. For this act of kindness, your appellant shall ever be grateful to your goodself. "

3.1. The aforesaid reasons were not found satisfactory by the Id. CIT(A) and the Id. CIT(A) ultimately dismissed the appeal of the assessee as not admitted by not condoning delay. We find that assessee had duly explained the reasons for the delay as reproduced above and we deem it fit and appropriate to accept the same as reasonable cause and direct the Id. CIT(A) to first condone the delay and adjudicate the additions made by the Id. AO on merits. Hence, the appeal is restored to the file of the Id. CIT(A) for fresh adjudication on merits. Accordingly, the grounds raised by the assessee in ITA No.7079/Mum/2017 are allowed for statistical purposes.

4. Since the quantum appeal has been restored back to the file of the Id. CIT(A) supra, the appeal in ITA No.7080/Mum/2017 refers to penalty levied u/s.271(1)(c) of the Act, which also deserves to be set aside to the file of the Id. CIT(A). Accordingly, the grounds raised by the assessee are allowed in ITA No.7080/Mum/2017 are allowed for statistical purposes.

5. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 14/02/2020

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated / /2020

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai