

IN THE INCOME TAX APPELLATE TRIBUNAL  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.701/Ind/2018**  
**Assessment Year: 2011-12**

M/s Kalindi Palace, Malviya Nagar Bhopal (Appellant)	<u>बनाम/</u> Vs.	ACIT-CPC Banglore (Revenue)
P.A. No.AAJFK2072K		
Appellant by	None (Written Submission)	
Revenue by	Shri V. J. Boricha, Sr. DR	
<b>Date of Hearing:</b>	<b>12.08.2020</b>	
<b>Date of Pronouncement:</b>	<b>26.08.2020</b>	

**आदेश / O R D E R**

This appeal by the assessee is directed against order of the Commissioner of Income Tax Appeals [CIT(A)]-1, Bhopal dated 07.06.2018 pertaining to the assessment year 2011-

12. The assessee has raised following grounds of appeal:

- “1. The appellant prays that the intimation framed under section 143(1) of the Act be amended since it is not based on facts completely.*
- 2. That the facts and circumstances of the case, Income Tax Officer (CPC) erred in disregarding the basis conditions prescribed for making an intimation under section 143(1) and the relevant intimation is not based completely as per*

*ITR filed.*

*3. That on facts and circumstances of the case, the Ld. AO(CPC) also erred in exceeding this power, authority and jurisdiction u/s 143(1) of the Income Tax Act, 1961 in processing the return by not allowing earlier year unabsorbed depreciation of Rs.806960 to the declared income of Rs. nil without specifying the nature and detail of addition made.*

*4. That on facts and circumstances of the case, even assuming that the said claim of unabsorbed depreciation is debatable claim, it cannot be made the subject matter of prima facie adjustment.*

*5. That on facts and in circumstances of the case, an opportunity should have been given before disallowing the claims. Even an opportunity should also have been given in respect of our interpretation, which may kindly be given on facts and in circumstances of the case.”*

2. The facts giving rise to the present appeal are that the assessee is doing business of lodging and boarding. The assessee claimed unabsorbed depreciation Rs.8,06,960/- of earlier year from net profit of Rs.7,10,236/- and declared the income nil as shown in audit report. The deference amount of Rs.96,730/- unabsorbed depreciation of was carried forward for future year. The return was processed under section 143(1) of the Act and the intimation dated 16.2.2012 was issued by the CPC, wherein the net profit of

Rs.7,10,236/- was not adjusted against earlier year unabsorbed depreciation of Rs.8,06,960/-. The assessee has electronically filed rectification application under section 154 of the Act on 19.06.2013 requesting to allow unabsorbed depreciation as claimed in return.

3. Aggrieved against this the assessee preferred an appeal before Ld. CIT(A), who also dismissed the appeal.

4. Now the assessee is in appeal before this Tribunal. The case was heard with the assistance of written submissions.

The submissions of the assessee are reproduced as under:

*1.1 The appellant is doing the business of lodging and boarding .The assessee claimed unabsorbed depreciation Rs 806960 of earlier year from net profit of Rs 710236 and declared the income nil as shown in audit report. The difference amount of Rs 96730 unabsorbed depreciation of was carried forward for future year.*

*1.2 The return was processed under section 143(1) of the act and the intimation dated 16-2-2012 was issued by the CPC, wherein the net profit of Rs 710236 was not adjusted against earlier year unabsorbed depreciation of Rs806960.*

*1.3 Against said intimation, the assessee electronically filed rectification application under section 154 of the Act on 19-6-13 requesting to allow unabsorbed depreciation as claimed in return.*

1.4 The CPC vide communication dated 25-6-2013 rejected the request for rectification and stated that rectification rights are transferred to AO.

1.5 Due to no-response the assessee filed appeal before the Learned CIT(A)-1 against intimation order under section 143(1) issued by the CPC which was summarily rejected by him mentioning that the appeal was filed beyond the time limit u/s 249(2). No reason was given nor any condonation application was filed. He also pointed out that the appellant has withdrawn application as referred in CPC communication dated 25-6-2013.

1.6 After rejection of appeal by CIT(A), the assessee filed physical application before the jurisdictional AO on 13-7-18 but he did not receive any kind of communication.

The summarized position of the matter pursued by appellant are as under:

Date	Event	remark
26-9-2011	Date of filing of return declaring income total income nil	PB No 1-1A
16-2-2012	Date of intimation under 143(1) from CPC with demand of Rs 243210/Disallowing unabsorbed depreciation Rs 710236/	PB No 2-3
11-6-2013	Date of application filed online with CPC rectification reference no602466910110613	PB No 4
19-6-2013	Status showing Rectification request rejected as per login dated on 17-4-18	PB No 4
25-6-2013	Status modified showing rectification request rejected on 19-6-2013 and also revealed that <i>rectification rights transferred to jurisdictional assessing officer</i> on 25-6-2013 as per login dated 9-11-19	PB No 5
08-7-2015	Appeal filed against the order of CPC Under section 143(1) of the ACT	Referred in appeal order PB No 6-8
7-6-2018	Appeal order of learned CIT (A) -1Bhopal rejected u/s249(2) that appeal is not maintainable.	PB No 6-8
13-7-2018	Date of fresh application under section 154 filed before AO seeking rectification of CPC order S	PB No 9-10

2. Being aggrieved with the said order the appellant is in appeal before your Honour and have taken various grounds:

For sake of convenience the issue involved may be summed up as under:

2.1 That the CIT (A) has erred in law to reject the income without affording any opportunity of hearing for delay condoned when the appellant was prevented by sufficient cause that the rectification application was not adjudicated by the learned AO. (Ground no. 1,2 and 5)

2.2 That on facts and circumstances of the case, the learned AO(CPC ) erred in processing the return by not allowing earlier year unabsorbed depreciation of Rs 806966 to the declared income of Rs nil without specifying the reason (Ground no. 3 and )

2.3 That on facts and circumstances of the case, even assuming that the said claim of unabsorbed depreciation is debatable claim, it cannot be made the subject matter of prima-facie adjustment. (Ground no .4)

### 3 Facts:

3.1 That the CIT(A) has erred in law not entertaining the Appeal u/s 249(2) without affording any opportunity of hearing for delay condoned when the appellant was prevented by sufficient cause that CPC has specifically stated that the rectification rights transferred to jurisdictional assessing officer on 25-6-2013

Para No 5 -6 pg. no \_2 of the appeal order, reproduces as under:

“It is observed that the order under section 154 against which appeal has been filed was received by appellant on 16.02.2012.However it has been filed on 18.7.2015.This appeal has been filed after more than three and half years of communication of order. The same is much beyond time allowed under section 249(2).It is also seen that no application for

*condonation of delay was filed not any ground of condonation of delay was taken. Further, in the written submission filed, the issue of delay in filing of appeal or any request for condonation of such delay has not been submitted. In a computerized environment, the return are filed on line and the relevant order is also available online and sent by e -mail. Therefore, the appeal is dismissed for having been filed beyond the time allowed under section 249(2).It is also seen from the communication from CPC dated 11.06.2013 filed by the appellant that there is an annexure to the said communication which shows that appellant has withdrawn rectification application.”*

### 3.2 Submission:

*The appeal was not entertained by the learned CIT (A) on technical ground of limitation and the doors of justice were shut to the assessee without considering the plea of the assessee on merits of the case.*

*The assessee electronically filed rectification application under section 154 of the Act on 11-6-13 to allow unabsorbed depreciation as claimed in return on the intimation received u/s 143(1) .The CPC vide communication dated 25-6-2013 rejected the request for rectification stating –“Rectification rights transferred to AO.”*

*(Copy enclosed at page no PB NO 5)*

*The appellant was under the impression that the department will rectify the order or will communicate to the assessee.In fact, no rectification order nor any communication was received by the Jurisdictional AO .When no formal communication was received nor the Portal reflected any amendment ,the assessee’s only option was to file the appeal . At the time of hearing of appeal, it was stated that appellant filed rectification application before CPC .The communication letter dated 19-6-13 showing that rectification request is rejected thereafter status was modified and communication letter dated 25-6-13 reveals that rectification right transferred to jurisdictional AO. The question of withdrawn of rectification application does not arise and the finding of the learned CIT(A)is contrary to records.*

*Copy enclosed at page no 5*

*3.3 It may be further stated that as per- INSTRUCTION NO.3/2013[F.NO.225/76/2013/ITA.II], DATED 5-7-2013, it has been instructed-*

*Relevant Para of instruction:*

*In respect of e-filed returns, the rectification applications are also filed online. The CPC would be required to immediately identify whether action can be taken at its own end or it has to be transferred to the Assessing Officer for necessary action. If CPC is required to take action, it would do so within the time-frame prescribed. On the other hand, if the Assessing Officer is required to dispose it off, he would enter the same in the online rectification register, process it on AST and shall again make necessary entries therein once the same is disposed off. The prescribed time limit would strictly be adhered to in this case also.*

*3.4 From the plain reading of said para it appears that jurisdiction AO ward 1(1) of the assessee has to suo moto rectified on the basis of the application received through CPC dated 25-6-2013 meaning thereby there is no need to file the fresh application. It may further be submitted that no communication nor any opportunity was received from the department the assessee again filed physical application on 13-07-2018 which is still pending and has also been unanswered.*

*3.5 It has been consistently held by the apex Court and various high court that in the matter of condonation of delay, a liberal and pragmatic view should be taken. The reasons given by the appellant for the delay appears to be sufficient cause and, accordingly, the delay is liable to be condoned.*

*Hence the delay of filing of appeal was caused due to pursuing alternative remedy of application under section 154 which amounts to reasonable cause and if assessee is seeking alternative option than the appeal should be condoned in such*

proportion the following case laws are relevant. .

1. Sri Sri Raghvendra V Asst commissioner appeal No ITA Nos.2518 & 2519/Bang/2018

BHARAT AUTO CENTER vs. COMMISSIONER OF INCOME TAX

(2005) 73 CCH 0661 AllHC

*Appeal [CIT(A)]—Condonation of delay—Reasonable cause—Since an important legal point relating to jurisdiction of the assessing authority was involved, the application was also filed U/s 154, the assessee sought legal opinion of several counsel which took a long time and then a writ petition was filed but subsequently appeal was filed—Aforesaid reasons appear to be sufficient cause for the delay—Delay ought to have been condoned—Matter is remanded back to the CIT(A) to decide the appeal on merit.*

3.6 It is pertinent to mention over here that the application under section 154 is still pending before the AO. The appellant hereby humbly prays that the direction may kindly be given to condoned delay by the Hon'ble CITA so that the assessee would be able to prove with cogent evidences it's case on merits before the Learned CIT (A) or jurisdictional AO.

SHREE DARSHAN CORPORATION vs. ASSISTANT COMMISSIONER OF INCOME TAX

A. MOHAN ALANKAMONY, AM & KUL BHARAT, JM.

(2013) 37 CCH 0292 AhdTrib

*Principle of natural justice—Opportunity of being heard—CIT(A) dismissed appeal of assessee being filed beyond prescribed stipulated period without accompanying application for condonation of delay—Assessee challenged dismissal of appeal contending that CIT(A) had passed ex-parte order without giving opportunity of being heard—Held, order passed by CIT(A) shows that assessee had preferred to remain absent during appellate*

*proceedings and also did not file any application for condonation of delay in filing appeal—Though revenue has merits in submission, however, one more opportunity for being heard is provided to assessee in the interest of justice—Matter accordingly remanded back to CIT(A) to decide case as per merits—Appeal filed by assessee is allowed.*

*4 Ground regarding allowance of unabsorbed depreciation consistently allowed in earlier year as well subsequent year:*

*4.1 Submission:*

*It may also be submitted that in earlier year as well as in subsequent year the effect of the unabsorbed depreciation was consistently allowed by the CPC while processing the return under section 143(1)A of the act*

*As the unabsorbed depreciation in earlier year as well as in subsequent year were consistently allowed by the department, the same should have been accepted in subject year also.*

*5. Ground regarding unabsorbed depreciation cannot be made as prima facie adjustment :*

*Submission*

*Even assuming that the said claim of unabsorbed depreciation is debatable claim, it cannot be made the subject matter of prima-facie adjustment.*

*That the intimation received from the CPC Bangalore ,the addition has been made without mentioning any reason and details, even no opportunity was afforded .It is settled law in processing the return U/s 143(1) only prima facie adjustment was permissible .If there was any debatable claim, it cannot be made u/s 143(1)a as prima facie adjustment .*

*4.2 The Hon'ble ITAT Indore Bench in the case of ACIT vs. Som Distilleries & Breweries Ltd. in ITA No. 248/Ind/2012 adjudicated as under:*

*From the return of income and its accompanying documents, it is seen that the appellant had correctly computed the total income at nil figure and the ITO, CPC had not assigned any justification*

*for not allowing set off of the brought forward losses of Rs. 7,95,38,033/- to be set off against the income of the current year. The factual infirmity, if there be any, in the computation of total income filed by the appellant, was also not specified by the A.O. [Section 143\(1\)](#) does not authorise making such non speaking unilateral adjustments. It is trite that u/s 143(1)(a) prima facie adjustments is permissible only in respect of claims, the incorrectness of which is apparent from information in the return. Debatable claims are not liable to such prima facie adjustments. In the given facts and circumstances of the case, the denial of the impugned claim, in my considered view, could be done only after issue of notice to the appellant, since the non-speaking unilateral denial of the impugned claim was clearly outside the ambit of prima facie adjustments envisaged in [section 143\(1\)\(a\)](#) of the Act and that the A.O. did not have sufficient material to hold that the impugned claim was prima facie inadmissible. Under the provisions of [section 143\(1\)\(a\)](#) of the Act, the A.O. was not entitled to allow or disallow the claim but could only make adjustment on a prima facie scrutiny of the return and the accompanying documents filed by the appellant. As already stated, since the impugned non-speaking unilateral denial of the appellant's claim, was without issue of notice to the appellant, in my considered view, the A.O. travelled beyond the scope of the powers conferred upon him by [section 143\(1\)\(a\)](#) and thus wrongly disallowed the impugned claim which by no stretch of imagination could come within the ambit of prima facie adjustments u/s 143(1)(a) of the Act.*

5. On the other hand, ld. Sr. DR opposed the submission of the learned Counsel for the assessee and relied upon the order of the Ld. CIT(A).

6. I have gone through the written submission and heard argument of Ld. DR. I find that the Ld. CIT(A) dismissed the appeal

on technical grounds of delay in filing of appeal and withdrawal of rectification application. However, on consideration of written submission filed by the assessee, I find that the assessee has contended that the communication letter 19.06.2013 has shown that rectification request is rejected and status was modified, accordingly, rectification right was transferred to jurisdictional AO. Therefore, the question of withdrawal of rectification application does not arise Thus, there was no need to file fresh application. However, since no communication nor any opportunity was received from Department, the assessee again filed physical application on 13.7.2018 which is still pending and has also been unanswered. Hence, the delay of filing of appeal was caused due to pursuing alternative remedy of application u/s 154 which amounts to reasonable cause. The assessee also relied on

*Sri Sri Raghvendra V Asst commissioner appeal No ITA Nos.2518 & 2519/Bang/2018;*  
*BHARAT AUTO CENTER vs. COMMISSIONER OF INCOME TAX*  
*(2005) 73 CCH 0661 AllHC;*  
*SHREE DARSHAN CORPORATION vs. ASSISTANT*  
*COMMISSIONER OF INCOME TAX*  
*A. MOHAN ALANKAMONY, AM & KUL BHARAT, JM.*  
*(2013) 37 CCH 0292 AhdTrib*

7. In view of above facts and also that the ld. CIT(A) did not decide the case of merits, I am of the view that it would be in the interest of justice and fair play, if one more opportunity of being heard is granted to the assessee. Accordingly, I set aside the order of the ld. CIT(A) and restore the matter back to the file of the ld. CIT(A) who shall pass the order on merit considering the written submission filed before me. The assessee is directed to cooperate in the matter by filing any further evidence, if any, in support of the claim. The ld. CIT(A) would decide the appeal afresh in terms as indicated hereinabove after affording due opportunity of being heard to the assessee as per law and the assessee is also directed to cooperate/appear before ld. CIT(A) in this regard.

8. In result, appeal filed by the assessee is allowed for statistical purposes only.

Order was pronounced in the open court on 26.08.2020.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**Dated : 26.08.2020  
Patel/PS**

**Copy to:**  
**Appellant/Respondent/Pr.CIT(A)/Pr.CIT/DR, Indore**

By order

**Assistant Registrar, Indore**