

आयकर अपीलीय अधिकरण, 'बी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.289, 290 & 291/Chny/2020

(निर्धारणवर्ष / Assessment Years: 2013-14 to 2015-16)

M/s.J.D.Automobiles & Allied Services Pvt. Ltd., 90, Madhavaram High Road, Perambur, Chennai-600 011.	Vs	The Assistant Commissioner of Income Tax, Central Circle-3(2), Chennai
PAN: AADCJ 2101M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. J.Pavithran Kumar, JCIT

सुनवाई की तारीख/Date of hearing	:	30.09.2020
घोषणा की तारीख /Date of Pronouncement	:	30.09.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

These three appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-19, Chennai dated 27.09.2019 and they pertain to the assessment years 2013-14, 2014-15 and 2015-16. Since, facts are identical and issues are common, for the sake of convenience these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for all the assessment years. Therefore, for the sake of

brevity, the grounds of appeal filed for the assessment year 2013-14 are reproduced as under:-

"1. For that the order of the Learned Commissioner of Income Tax (Appeals) - 19, Chennai u/s. 250 of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case and the principles of natural justice.

2. For that the Learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal for non-prosecution placing reliance on the decision of Delhi Tribunal in the case of CIT V. MIs Multiplan India (P) Ltd in [1991] 38 ITD 320 (Delhi).

3. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.72,000/- made by the Assessing Officer on account of incentive payable to dealer stating that the same is not recorded and paid to dealer.

4. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.7,37,660/- made by the Assessing Officer on account of processing fee received stating that the same is not admitted.

5. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.1,20,000/- made by the Assessing Officer on account of late fee collected from customers stating that the same is not recorded in books.

6. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.1,29,821/- made by the Assessing Officer on account of unexplained expenditure towards salary.

7. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.1,03,965/- made by the Assessing Officer on account of amounts received towards others stating that the same was not offered to tax.

8. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the levy of interest u/s 234A consequent to the above additions."

3. At the time of hearing, the Authorized Representative for the assessee submitted that there is a delay of 71 days in filing of all these appeals before the Tribunal for which necessary petition along with sworn affidavit has been filed for condonation of delay. The learned AR for the assessee referring to the affidavit filed by the assessee submitted that delay in filing of appeals before the Tribunal is due to inadvertent mistake of the counsel of the assessee, who handled tax matters before the Assessing Officer as well as the learned CIT(A). The learned AR further submitted that the learned CIT(A) has dismissed the appeals filed by the assessee ex-parte, for non-appearance of the assessee on the date of hearing and served the order through e-mail ID given in the memo of appeal, which was not followed up / addressed by the person in-charge for Finance & Taxation of the assessee company. Further, the assessee has changed his counsel during September, 2019 and this issue was handed over to new counsel for resolving the tax dispute and at that time, the counsel came to know that the appeals were not filed against the orders of learned CIT(A). Subsequently, on taking stock of pending litigation and on verifying the status, the assessee has taken immediate steps and filed appeals on 05.02.2020 before the Tribunal with a

delay of 71 days. He further submitted that the delay in filing of appeals was beyond the control of the assessee and not filing within time the assessee did not derive any benefit, therefore in the interest of justice and equity, the delay in filing appeals may be condoned to advance substantial justice.

4. The learned DR, on the other hand, strongly opposing the petition filed by the assessee for condonation of delay submitted that reasons given by the assessee for delay in filing of appeals does not come under the purview of reasonable and bonafide cause and accordingly, the delay in filing of appeals may not be condoned.

5. We have heard both sides and perused the petition filed by the assessee for condonation of delay in filing of appeals. On perusal of the reasons offered by the assessee for not filing the appeal within the time allowed under the Act, we find that the delay in filing of appeals is mainly because of mishandling of tax proceedings before the authorities by the earlier Consultant, who had handled the tax matters of the assessee for which the assessee cannot be penalized. Therefore, taking note of overall facts and circumstances of the case and also considering the

reasons given by the assessee, we deem it appropriate to condone the delay in filing appeals to decide the issues on merits. Accordingly, the delay in filing of appeals is condoned and appeals of the assessee are admitted for hearing.

6. The brief facts of the case as coloured out from appeal for assessment year 2013-14 are that the assessee is a private limited company which is engaged in the business of financing two wheelers sold through its group concerns namely M/s. Kamakshi Motors, M/s.Krithik Motors and M/s, Enkay Motors. A search and seizure operation u/s.132 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") was conducted on the business premises of the assessee along with residential premises of the Director on 28.01.2015. Consequent to search, case was taken up for assessment and accordingly notice u/s.153A of the Act. In response to notice, the assessee has filed return of income declaring total income of Rs.3,53,221/-. Subsequently, the case was taken up for scrutiny assessment and notice u/s.143(2) and 142(1) of the Act were issued calling for various details including books of accounts along with relevant documents to verify the information contained in the electronic devices and ledgers seized during the course of search. The Assessing Officer had also requested for

production of bank accounts of the assessee maintained with United Bank of India. The assessee neither appeared before the Assessing Officer nor filed details called for during the course of assessment proceedings. The Assessing Officer left with no option has completed the assessment based on the materials available on record and made various additions including additions to incentive payable to dealer collected but not recorded and paid to dealer, processing fee amount received from customers but not recorded in books, unexplained expenditure and amounts collected towards 'others' but not offered to tax.

7. Aggrieved by the assessment order, the assessee preferred an appeal before CIT(A). Before the learned CIT(A) also, the assessee neither appeared nor filed any details to justify its case, which is evident from the fact that despite six opportunity of hearings was provided to the assessee, there was no response from the assessee to avail opportunity to file the details. Therefore, the learned CIT(A) has proceeded to pass ex-parte order by following the decision of the Hon'ble Supreme Court in the case of CIT Vs.B.N.Bhattacharjee and Another (118 ITR 461) and dismissed the appeal filed by the assessee *in limine*. The learned CIT(A) has also rejected various grounds of appeal taken by the assessee on additions made by the

Assessing Officer on the ground that the assessee has not filed any explanation or material / documentary evidence at the time of appellate proceedings and even during the assessment proceedings. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

8. The learned AR for the assessee submitted that the learned CIT(A) has dismissed appeals filed by the assessee ex-parte, without discussing the issues on merits in a hurried manner for non-appearance of the assessee on given dates of hearing, but the fact remains that the counsel for the assessee had filed a letter requesting for date, but the CIT(A) has ignored the adjournment sought by the assessee and dismissed the appeals ex-parte. Therefore, the order of the CIT(A) may be set aside to give one more opportunity of hearing to the assessee to file necessary evidence to defend its case.

9. The learned DR, on the other hand, strongly supporting the order of the CIT(A) submitted that the facts brought out by the learned CIT(A) clearly indicate that the assessee was non-cooperative to the proceedings before the CIT(A) as well as Assessing Officer. From the above, it is very clear that the assessee

is not interested in pursuing its case and hence there is no need to give another opportunity to the assessee before the Assessing Officer.

10. We have heard both parties, perused the material available on record and gone through the orders of authorities below. It is well settled principles of law that a person, who filed appeal shall go to the authorities and justify its case along with necessary evidence. In case, the assessee does not choose to appear before the authorities, then the authorities are left with no other option but to proceed to pass an order in accordance with law on the basis of materials available on record, but, at the same time, the authorities are bound to dispose of the appeal filed by the assessee on merits on the basis of materials available on record. In this case, on a perusal of the order passed by the learned CIT(A), we find that the CIT(A) has dismissed the appeals filed by the assessee *ex-parte in limine* without discussing the issues on merits. Therefore, we are of the considered view that the appeals need to go back to the file of CIT(A) to give one more opportunity of hearing to the assessee to file necessary evidences and to decide the issues involved in the appeals on merits. Hence, we set aside the orders of the learned CIT(A) and restore the appeals back to the file of the CIT(A) to

decide the issues on merits. Needless to say, the assessee shall go and file necessary evidences without seeking any further adjournments. In case, the assessee chooses not to appear before the learned CIT(A), then the appellate authority is at liberty to decide the appeals in accordance with law.

11. In the result, the appeals filed by the assessee for all the assessment years are allowed for statistical purposes.

Order pronounced in the open court on 30th September, 2020

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 30th September, 2020

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

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|--------------------|-------------------------|------------------------------|
| 1. Appellant | 2. Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |