

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC-2" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
ITA.No.7451/Del./2019  
Assessment Year 2016-2017

M/s. An Dent India Pvt. Ltd., 2554/1, Street No.10, Bihari Colony, Shahdara, New Delhi – 110 032. PAN AABCE1122H	vs.	The Income Tax Officer,  Ward – 2 (4),  Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri R.S. Singhvi, C.A.
For Revenue :	Ms. Rakhi Vimal, Sr. D.R.

Date of Hearing :	06.10.2020
Date of Pronouncement :	06.10.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-1, New Delhi, Dated 10.07.2019, for the A.Y. 2016-2017.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the Orders of the authorities below.

3. In this case the A.O. passed the ex-parte assessment order Dated 24.12.2018 making an addition of Rs.43,70,000/- under section 69A of the I.T. Act, 1961, on account of unexplained deposit in the Bank Account. The assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) noted that appeal is delayed by 47 days. The assessee company filed an affidavit of Shri Anil Kumar Tandon i.e., Director of the Assessee-Company which is reproduced in the impugned order explaining therein that after receipt of notice under section 143(2) the assessee relied upon the Counsel engaged, but, due to unprofessional conduct of the Counsel, the assessee company did not represent before A.O, which resulted into ex-parte assessment order. The assessee company after understanding the gravity of the issue and the unprofessional conduct of the Counsel, looked for another professional and thereafter engaged M/s. Tarun Subhash Arora & Company, C.A. to represent the case before the Ld. CIT(A). It is, therefore, explained that time has taken in changing the Counsel and engaging another Counsel. The

Ld. CIT(A), however, did not accept the contention of the assessee and held that assessee failed to explain the delay in filing the appeal, therefore, the delay was not condoned and appeal of assessee was dismissed as time barred.

4. Learned Counsel for the Assessee, reiterated the submissions made before the authorities below.

5. On the other hand, Ld. D.R. submitted that assessee was ex-parte before A.O. as well, therefore, delay was rightly not condoned by the Ld. CIT(A).

6. We have considered the rival submissions and perused the Orders of the authorities below. It is an admitted fact that Director of the Assessee-Company filed an affidavit before the Ld. CIT(A) to explain the delay of 47 days in filing the appeal due to the misconduct of the earlier Counsel and time taken in engaging another Counsel for filing the appeal and to represent the assessee before the Ld. CIT(A). The contents of the affidavit have not been disputed by the Ld. CIT(A). These facts shows that assessee was entirely dependent upon the Counsel, but, did not act

on time, therefore, in engaging another Counsel time has been taken to engage another Counsel. Thus, assessee acted bonafidely without any negligence or inaction. It is well settled Law that delay could be condoned if there was sufficient cause for delay in submission of the appeal. In the case of Vedabai alias Vaijayantabai Baburao Patil vs., Shantaram Baburao Patil [2002] 253 ITR 798 (SC) the Hon'ble Supreme Court held that *"while exercising discretion under section 5 of the Limitation Act, 1963, to condone the delay for sufficient cause in not filing the appeal within the prescribed period, the Court should adopt a pragmatic approach. A distinction must be made between a case where delay is inordinate and a case where the delay of few days. The Court observed that whereas in the former consideration of prejudice to other side will be a relevant factor and calls for a more cautious approach and in the later case no such consideration may arise and such a case deserves a liberal approach."* In the present case the delay is of nominal 47 days which were due to negligence of the Counsel. Thus, the assessee has bonafide explanation and no prejudice is going

to be caused to the Revenue if appeal is decided on merits. Thus, by taking a pragmatic view and considering the circumstances as explained above, we set aside the Orders of the authorities below and condone the delay in filing the appeal before the Ld. CIT(A). The appeal of assessee is restored to the file of Ld. CIT(A) with a direction to re-decide the appeal of assessee on merits, by giving reasonable, sufficient opportunity of being heard to the assessee as well as A.O. Appeal of the Assessee is allowed for statistical purposes.

7. In the result, appeal of the Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 06<sup>th</sup> October, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.