

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]**

I.T.A. No. 30/Kol/2021
Assessment Year: 2014-15

Hope Vyapar Pvt. Ltd.....Appellant
9/12, Lal Bazar Street, 3rd Floor,
Kolkata - 700 001.
[PAN: AABCH 9952 J]

Vs

ITO, Ward-5(4) Kolkata.....Respondent
Jalpaiguri.

Appearances by:

None appearing on behalf of the Assessee.

Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : May 05, 2021

Date of pronouncing the order : May 05, 2021

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 18, Kolkata dated 16.10.2018 passed ex-parte whereby he dismissed the appeal of the assessee for non-prosecution.

2. At the outset it is noted that there is a delay of 773 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay on the following grounds:

"i. The documents necessary for filing of appeal was prepared by 19th of November, 2018 and handed over signed copies of the documents in the office of the advocate / authorized representative.

ii. On 20th November, 2018 it was informed that Form No. 36 has been amended and new form is required for filing of appeal. We collected the amended Form No. 36 on 21st November, 2018 and was having problem in filing the new form.

iii. Again approached the Advocates office on 26th November, 2018 and with his help completed filing the Form. The appeal memo duly stamped and signed sent to the advocate's office on 27th November, 2018.

iv. Recently upon enquiring about the status of the case from the advocate we came to know about the fact that the appeal was inadvertently not filed for the reason of misplacement of appeal documents in the process of shifting of office of the advocate.

The aforesaid inadvertent mistake happened due to miscommunication between the applicant and the said Learned Advocate and hence, the delay is completely unintentional.”

Keeping in view the reasons given by the assessee as above, I am satisfied that there was a sufficient cause for the delay of 773 days on the part of the assessee in filing this appeal before the Tribunal. Even the learned DR has not raised any objection in this regard. The said delay is accordingly condoned and the appeal of the assessee is being disposed on merit.

3. The assessee in the present is a company which is engaged in the business of investment in share & securities. The return of income for the year under consideration was filed by it on 31st March, 2015 declaring a total income at nil. During the course of assessment proceedings, it was noticed by the AO that the assessee has made investment which is capable of earning exempt income. I, therefore, invoked section 14A by relying on the CBDT Circular No. 5 of 2014 and made a disallowance of Rs. 4,28,275/- by calculating the expenses allegedly incurred by the assessee in relation to the investment which was capable of earning exempt income by applying Rule 8D.

4. The disallowance made by the AO u/s 14A read with Rule 8D was challenged by the assessee in the appeal filed before the Ld. CIT(A) and since there was no compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing on two

occasions, the Ld. CIT(A) dismissed the appeal of the assessee for non-prosecution vide his appellate order dated 16.10.2018 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. At the time of hearing fixed in this case, none has appeared on behalf of the assessee. This appeal of the assessee is therefore being disposed of ex-parte after considering the arguments of the learned DR and perusing the relevant material available on record. It is observed that the appeal of the assessee was fixed for hearing by the Ld. CIT(A) on two occasions and without giving any further opportunity to the assessee of being heard, the appeal of the assessee was dismissed by the Ld. CIT(A) vide his impugned order passed ex-parte for non-prosecution because there was no appearance on the part of the assessee on both the dates of hearing fixed by the Ld. CIT(A). In my opinion, the assessee therefore cannot be said to have given proper and sufficient opportunity of being heard by the Ld. CIT(A) before dismissing the appeal of the assessee for non-prosecution vide his impugned order passed ex-parte and even the ld. DR has not been able to dispute this position which clearly evident from the impugned order passed by the Ld. CIT(A). Moreover, as per the provisions of sub-section (6) of section 250, the Ld. CIT(A) was required to dispose of the appeal of the assessee vide an order in writing stating the points for determination, the decision thereon and the reasons for the decision. It is observed that the impugned order passed by the Ld. CIT(A) does not comply with these requirements. I, therefore, set aside the impugned order passed by the Ld. CIT(A) ex-parte and remit the matter back to him for disposing of the appeal of the assessee

afresh on merit in accordance with law after giving proper and sufficient opportunity of being heard to the assessee.

6. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 5th May, 2021.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 05/05/2021

Biswajit, Sr. PS

Copy of order forwarded to:

1. Hope Vyapar Pvt. Ltd., 9/12, Lal Bazar Street, 3rd Floor, Kolkata – 700 001.
2. ITO, Ward – 5(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / D.D.O.
ITAT, Kolkata