

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.449/Hyd/2020		
Assessment Year: 2004-05		
M/s. Silamkot Chit Funds Private Limited, Hyderabad. PAN: AAUCS 7577 D	Vs.	ACIT, Central Circle-6, Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri Y.V. Bhanunarayana Rao	
Revenue by:	Sri Sanjeev Bhagat, DR	
Date of hearing:	27/07/2021	
Date of pronouncement:	17/08/2021	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-3, Hyderabad in appeal No. 10231/2014-15/A3/CIT(A)-3, dated 16/03/2020 passed U/s. 271(1)(c) r.w.s 250(6) of the Act for the AY 2004-05.

2. The assessee has raised five grounds in its appeal and they are extracted herein below for reference:

- “1. On the facts and in the circumstances of the case, the order of the Ld CIT (A)-3, Hyderabad is erroneous and bad in law.
2. On the facts and in the circumstances of the case, the Ld. CIT (A) erred in dismissing the appeal filed by the assessee “in limine”

*against the orders passed by the Ld. AO U/s. 271(1)(c) of the Act by refusing to condone the delay in filing the appeal before him.*

3. *On the facts and in the circumstances of the case, the Ld. CIT (A) erred in dismissing the appeal “in limine” without considering the facts of the case and without going into the merits.*
4. *On the facts and in the circumstances of the case, the Ld CIT (A) grossly erred by disposing off the penalty appeal despite pendency of the quantum appeal of the assessee for the same year.*
5. *The Appellant craves leave to alter, amend or delete any of the above grounds of appeal and / or to add any fresh ground(s) of appeal at or before the hearing of the appeal.”*

3. At the outset, the Ld. AR submitted before us that there is a delay of 15 days in filing the appeal before the Tribunal. In this regard, the assessee had submitted an affidavit seeking condonation of delay wherein the reasons for filing the appeal beyond the prescribed time limit was explained. For reference, the relevant portion from the affidavit is extracted herein below: -

“.....

6. *That the quantum appeal filed by the Company for the AY 2004-05 is still pending disposal s on date, but the ld. CIT (A)-3, Hyderabad dismissed the appeal against penalty levied for the said AY 2004-05 in limine by refusing to condone the delay in filing the appeal vide orders dated 16/03/2020 which were received by the assessee on 6/6/2020.*

7. *That the company could not file the appeal before the ITAT within the stipulated time of 60 days since Sri G K Babu Chartered Accountant, who was handling our case before the CIT (A) had tested positive for COVID-19 and as such was in quarantine till August, 2020.*

8. *That after the said G.K. Babu started attending office in August, 2020, we contacted him and he advised us to file an appeal before the ITAT, Hyderabad through another Chartered Accountant by name Sri Y.V. Bhanu Narayan Rao who handles taxation appeals before the Hon’ble ITAT.*

9. *That the company got in touch with the said Chartered Accountant handling taxation appeals before the ITAT and the appeal in Form 36 was got prepared and the appeal was filed online on 19/08/2020 with a delay of 14 days duly enclosing the petition for condonation of delay for 14 days together with the requisite affidavit.....”*

4. On perusal of the affidavit filed by the assessee, We find that the delay of 15 days in filing of the assessee's appeal before the Tribunal has occurred due the change of Counsel by the assessee as the earlier Counsel got affected by Covid-19. Hence, we are of the view that there is no negligence on the part of the assessee and it deserves some leniency. Therefore, in the interest of Justice we hereby condone the delay of 15 days in filing the appeal and proceed to adjudicate the matter on merits.

5. Brief facts of the case are that the assessee is a Private Limited company engaged in the business of chits / finance / money lending activities. Since the assessee has not filed the return of income for the relevant assessment year, the Ld. AO completed the assessment U/s. 153C r.w.s 144 on 30/12/2008 and made an addition of Rs. 76,24,315/- treating the same amount being excess of assets over liabilities. Aggrieved by the order of the Ld. AO, assessee went on appeal before the Ld. CIT (A) and the same is pending for disposal before the Ld. CIT(A). In the meantime, the ld. AO initiated the penalty proceedings and passed order U/s. 271(1)(c) of the Act on 29/06/2009 and raised demand of Rs. 27,35,225/-. Against the order passed by the Ld. AO, the assessee filed an appeal before the Ld. CIT (A)-3, Hyderabad and the Ld. CIT (A) dismissed the assessee's appeal *in limine* and did not condone

the delay in filing the appeal before First Appellate Authority. Aggrieved by the order of the ld. CIT (A), the assessee is in appeal before us.

6. At the outset, the ld. AR submitted before us that since the assessee's appeal on the quantum addition made by the Ld. AO is pending before the Ld. CIT (A) and since the assessee has a good case in its favour, the order of the Ld. CIT (A) dismissing the assessee's appeal on the penalty levied by the Ld. AO does not have any merit. It was therefore pleaded that the appeal of the assessee may be remitted back to the file of the Ld. CIT (A) with directions to decide the issue on levy of penalty U/s. 271(1)(c) of the Act after disposing the quantum appeal on merits. On the other hand, Ld. DR vehemently argued in support of the orders of the Ld. Revenue Authorities.

7. We have heard the rival submissions and perused the materials on record. On examining the facts of the case as well as the orders of the Ld Revenue Authorities, it is apparent that the Ld. AO had passed the penalty order *ex parte*. On assessee's appeal, the ld. CIT (A) dismissed the appeal *in limine*. It is also a fact that the quantum appeal of the assessee against the addition made by the ld. AO is yet to be disposed off by the Ld. CIT (A) which the Ld.DR could not controvert. Considering these facts and circumstances of the case, we are of the view that the matter is required to be remitted back to the file of the Ld. CIT (A) in order to decide the penalty appeal after the disposal of the

quantum appeal on merits. Accordingly, we remit the matter back to the file of the Ld. CIT (A) with direction to consider the matter afresh based on the outcome of the quantum appeal of the assessee and thereafter pass appropriate order in accordance with law and merit.

8. In the result, appeal of the assessee allowed for statistical purposes as stated herein above.

Pronounced in the open Court on 17<sup>th</sup> August, 2021.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 17<sup>th</sup> August, 2021

OKK

Copy to:-

- 1) Silamkot Chit Funds Private Limited, 5-8-47, FS Lane, ABIDS, Hyderabad – 500 01.
- 2) The ACIT, Central Circle-6, Hyderabad.
- 3) The CIT (A)-3, Hyderabad.
- 4) The Pr. CIT-3, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File