



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA no.6709/Mum./2019  
(Assessment Year : 2010-11)

Mody Interiors Pvt. Ltd.  
201, Vishakha Arcade  
Near MVM School, Off Veera Desai Road  
Andheri (West), Mumbai 400 058  
PAN : AAECM7620H

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-16(3), Mumbai

..... Respondent

Assessee by : Shri Abhishekh Jhunjunwala  
Revenue by : Shri Bharat Andhele

Date of Hearing - 26.07.2021

Date of Order - 15.9.21

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The captioned appeal has been filed by the assessee challenging the impugned order dated 5<sup>th</sup> August 2019, passed by the learned Commissioner (Appeals)-7, Mumbai, pertaining to the assessment year 2010-11.

2. The assessee has filed this appeal on the following grounds:-

*"The appellant prefers an appeal against an order dated 05/08/2019 passed by Ld. Commissioner of Income Tax (Appeal) 7, Mumbai on following amongst other grounds each of which are without prejudice to any other :-*

*1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in not condoning the delay of 40 days in filing of the P<sup>t</sup> appeal being caused under the bonafide reasons and compelling circumstances beyond control of the appellant;*

*1.1 A humble prayer is made to direct Ld. CIT(A) to admit the appeal since the small delay of 40 days had occurred due to serious medical illness and ultimate death of appellant director's mother on 07/05/2018;*

*2.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have deleted the levy of penalty u/s 271(1)(c) of Rs.6,43,571/- in respect of disallowance of purchase made on adhoc estimation basis of Rs.19,30,714/- {@ 12.5% of Rs.1,54,45,712/-};*

*3.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to deleted the penalty u/s 271(1)(c) since the initiation of penalty in the assessment order and ultimately levy of penalty had been made under the dual charge of "concealment of income" and "furnishing inaccurate particulars of income".*

*The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing."*

3. In this case, the assessee is a work contractor and interior decorator having income from the sources consisting of income from business and profession. For the year under consideration, the assessee filed its return of income on 21<sup>st</sup> September 2010, declaring total income at ₹ 32,13,854. Subsequently, the Assessing Officer received information from the DGIT (Inv.), Mumbai, regarding bogus / non-genuine purchases to the extent of ₹ 1,54,45,712, from 10 parties, which are listed below:—

<i>Sr. no.</i>	<i>Name of Hawala Dealer</i>	<i>Amount (₹)</i>
1.	<i>Hermitage Trading Company Pvt. Ltd.</i>	<i>605379</i>
2.	<i>Agarwal Poly Impex Pvt. Ltd.</i>	<i>901300</i>
3.	<i>Niddhish Impex Pvt. Ltd.</i>	<i>1615432</i>
4.	<i>Donear Trading Pvt. Ltd.</i>	<i>2731824</i>
5.	<i>Hans Trading Co.</i>	<i>2958217</i>
6.	<i>Srishti Mercantile</i>	<i>1678034</i>
7.	<i>Liberty Trading Corporation</i>	<i>16130</i>
8.	<i>Tulsiani Trading Pvt. Ltd.</i>	<i>2657502</i>
9.	<i>Blazer Multi Trade Pvt. Ltd.</i>	<i>1046518</i>
10.	<i>Dibra Samarth Trading Pvt. Ltd.</i>	<i>1235376</i>
	<i>TOTAL</i>	<i>15445712</i>

4. It also came to be noticed by the Assessing Officer that these 10 parties were suspicious dealers who have issued accommodation entries without actual delivery of goods.

5. The Assessing Officer, therefore, re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases worth ₹ 1,54,45,712, claimed to have been made during the year from the aforesaid ten parties. Further, to independently verify the genuineness of such purchases, the Assessing Officer issued notices under section 133(6) of the Act to the selling dealers calling for certain information. However, all such notices returned back unserved. Further, the Assessing Officer was not satisfied with the evidences furnished by the assessee to establish the genuineness of

purchases. Thus, ultimately, the Assessing Officer disallowed the entire amount of ₹ 1,54,45,712, and added it to the income of the assessee. The assessee being aggrieved with the order so passed by the Assessing Officer, filed appeal before the first appellate authority. The Assessing Officer also issued penalty order dated 30<sup>th</sup> March 2018, imposing penalty under section 271(1)(c) of the Act for ₹ 6,43,571, without mentioning under which limb of section 271(1)(c) of the Act, the penalty order was issued.

6. The learned CIT(A) dismissed the appeal by not condoning the delay of 55 days in filing the appeal before the first appellate authority. The operative part of the learned CIT(A)'s order by dismissing the assessee's appeal is reproduced below for better appreciation of facts.

*"3. The appellant has sought for condonation of delay for filing the appeal late in Form No. 35 on 30.06.2018 in CIT(A)-7's Office mentioning that*

*"There is delay of 55 days which may be condoned."*

*4.1 Having gone through the assessee's aforesaid plea for condonation of delay, I find that there is a delay of 40 days in filing of appeal and no case has been made out by the assessee explaining such a long delay. The assessee admittedly received the aforesaid order of the AO on 22.04.2018 and thus the last day of filing of appeal was 22.05.2018. The appeal was actually filed on 30.06.2018. The appellant has merely sought for the condonation without mentioning any reason. During the course of the appellate proceedings, also the appellant/AR did not submit any reason orally or in written submissions for e-filing appeal late by 40 days.*

*4.1.1 The aforesaid application, therefore does not explain*

*reasons much less showing and demonstrating sufficient cause. It is a settled position of law that the assessee is duty bound to explain each day's delay after the last date of limitation. It is a clear case of sheer negligence for non-pursing available ft time. It is for the appellant concerned to explain the delay and it is settled position of law that the assessee is duty bound to explain each day's delay after the last date of limitation. It is clear case of sheer negligence for non-pursing available remedy in time. It is for the appellant concerned to explain the delay and it is not the function of the appellate authorities to find the cause of delay. The The appellate authority has to examine whether sufficient cause has been shown by tfr party for condoning delay and whether such cause is acceptable or not. In fiwit view of the matter, the Tribunal cannot condone the delay without asking the party concerned to explain the delay, by giving its own reason for the delay [DCM Ltd. vs. State of Tamil Nadu, (1995) 96 STC 263, 264 (Madras)].*

.....

*On the similar matter and facts, the Hon'ble Rajasthan High Court in the case of State of Rajasthan v. Chaudhury Construction AIR 1988 Raj. 123 held -*

*"that in the absence of material particulars as to why delay had been caused, the delay could not be condoned b<sup>y</sup> merely accepting the explanation that the delay occurred in the Government Office." (emphasis supplied)*

*5. In view of the foregoing discussion, factual matrix and the judicial precedents, I find that no case has been made out by the assessee for existence of sufficient cause in the application for condonation of substantial period of delay of 40 days in filing of appeal. I also find that it is also a settled position of law that the delay is unexcusable unless sufficient cause is shown. Therefore, I am of the view that in the absence Of existence of reasonable cause, the appeal filed by the assessee late by 40 days, the delay is not condonable. Hence, the appeal of the assessee is not admitted and the same is dismissed in limine.*

7. Before us, the learned Departmental Representative opposing the condonation of delay in filing the present appeal submitted that the assessee has not brought on record any evidence justifying the cause

of delay in filing the present appeal, hence the learned CIT(A) was correct in his stand.

8. Considered the rival submissions and perused the material on record. Keeping in view the principles of natural justice, we are of the considered view that the lis between the parties be decided on merits and no person should be condemned unheard. Therefore, the delay on the part of the assessee in filing appeal before learned CIT(A) is condoned and the appeal is restored to the file of learned CIT(A) and direct him to decide the appeal filed by the assessee on merit. It is needless here to mention that before passing the order, the learned CIT(A) shall provide sufficient opportunity of hearing to the assessee. Before parting, we may make it clear that our decision to restore the matter to the file of the learned CIT(A) shall, in no way, be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the learned CIT(A) independently in accordance with law.

9. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 15.9.21

**Sd/-**  
**MAHAVIR SINGH**  
**VICE PRESIDENT**

**Sd/-**  
**S. RIFAUR RAHMAN**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 15.9.21**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai