

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'SMC', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.62/Del/2021
(Assessment Year : 2018-19)

Uttam Air Products Pvt. Ltd., 38, Rajender Park, New Delhi – 110060 PAN : AAACU 0033 A (APPELLANT)	Vs.	DICT CPC Banglore (RESPONDENT)
---	-----	---

Assessee by	Shri Priyansh Jain, C.A.
Revenue by	Shri R. K. Gupta, Sr. D.R.

Date of hearing:	23.09.2021
Date of Pronouncement:	23.09.2021

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-9, New Delhi dated 22.09.2022 for Assessment Year 2018-19.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a Pvt. Ltd. Company. The assessment order was passed by DCIT, CPC, Bangalore u/s 143(1) of the Act on

15.11.2019. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 22.09.2020 in Appeal No.10346/2019-20 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before me and has raised the following grounds of appeal:

- “1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and in facts in confirming the action of Ld. DCIT, Centralized Processing Center, Bangalore (“Ld. AO”) without appreciating the facts of the case and the written submission filed by the assessee on its income-tax portal.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and in facts in not condoning delay of 15 days in filing of appeal and outrightly rejecting the application filed by the assessee for condonation of delay without considering its merits, more so, when assessee had a bonafide and genuine reasons explaining the delay.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and in facts in confirming the action of Ld. AO in making disallowance of interest on TDS amounting to Rs. 14,394/- u/s 37 of the Act when the same has been already suo-moto disallowed by assessee in its return of income.*
4. *That in any case and in the view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 14,394/- u/s 37 of the Act and not accepting the claim of the appellant, is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and in facts in confirming the action of Ld. AO in making disallowance of provision of gratuity of Rs. 82,568/- u/s 40A(7) as it is has already been disallowed by the assessee in the return of income u/s 43B.*
6. *That in any case and in the view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making*

disallowance of Rs. 82,568/- u/s 40A(7) of the Act and not accepting the claim of the appellant, is bad in law and against the facts and circumstances of the case.

7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and in facts in confirming the action of Ld. AO in making disallowance of Rs. 1,34,248/- on account of late deposit of employees contribution to provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees u/s 36(l)(va) more so, when the same has been suo-moto disallowed by the assessee in its return of income.*
8. *That in any case and in the view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 1,34,248/- u/s 36(l)(va) of the Act and not accepting the claim of the appellant, is bad in law and against the facts and circumstances of the case.*
9. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B, 234D and 244A of Income Tax Act, 1961.*
10. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

4. Before me, at the outset, Learned AR submitted that though the assessee has raised various grounds in appeal but he would like to argue on Ground No.2 which is with respect to non-condonation of delay in filing the appeal before CIT(A).

5. Before me, Learned AR submitted that intimation u/s 143(1) of the Act dated 05.11.2019 passed by DCIT, CPC was received on the registered mail to Shri Kamal Singh Rawat, the accountant of the company on 20.11.2019 and accordingly the appeal before CIT(A) should have been filed on or before 20.11.2019 but was

filed on 06.01.2020 resulting into delay of 15 days. He submitted that Shri Komal Singh Rawat is a victim of 1992 Delhi Serial bomb blast surviving with severe injuries in his right leg. There are several metal shrapnel in his right leg which are required to be removed from time to time as and when he experiences pain. It was due to the surgery and medical advise he was absent from office from 18.11.2019 to 23.12.2019. Due to his absence, his email could not be accessed by any other person and after his joining, the matter for filing the appeal was taken. He submitted that the aforesaid facts along with the affidavit was filed before CIT(A) requesting for condoning the delay of 15 days but the same was not accepted by CIT(A) and accordingly the appeal was dismissed without deciding on merits. He therefore submitted that there was a reasonable cause for delay in filing the appeal and the delay be condoned.

6. Learned DR on the other hand supported the order of lower authorities.

7. I have heard the rival submissions and perused the materials on record. The perusal of CIT(A) order reveals that assessee had filed appeal before CIT(A) against the intimation passed u/s 143(1) of the Act dated 15.11.2019. There was delay of 15 days in filing the appeal before CIT(A) and the reasons for delay in filing the appeal was submitted before CIT(A) which has been reproduced by CIT(A) in his order. Learned CIT(A) did not condone the delay in filing the appeal and thereby dismissed the appeal of assessee without considering the merits of the case.

8. I find that Hon'ble Supreme Court in the case of N. Balakrishnan vs. M. Krishnamurthy (1998) 70 SCC 123 has held that as long as the conduct of the applicant does not, on the whole, warrant to castigate him as an irresponsible litigant, generally, the delay be condoned. It has further held that rules of limitation are not meant to destroy the right of parties but they are meant to see that parties do not resort to dilatory tactics. It has further held that in every case of delay there can be some lapse on the part of litigant concerned, however, that alone is not enough to turn down his plea and to shut the door against him. Further it is a settled law that in matters of condonation of delay, a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities. Before me, no material has been placed by Revenue to demonstrate that the delay in filing the appeal before CIT(A) by the assessee was due to some *malafide* intention on its part. In view of the aforesaid facts and in view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to parties and no party should be condemned unheard, I am of the view that the delay in filing the appeal before CIT(A) needs to be condoned. I accordingly condone the delay. Further, since the CIT(A) has not decided the appeal on merits, I am of the view that one more opportunity be granted to the assessee to present its case. I therefore restore the matter back to the file of CIT(A) for him to decide the issue on merits afresh in accordance with law. Needless to state that CIT(A) shall grant adequate opportunity of

hearing to both the parties. **Thus the grounds of assessee is allowed.**

9. Since I have restored the appeal back to the file of CIT(A), the other grounds raised on merits are not adjudicated.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 23.09.2021, immediately after conclusion of the hearing of the matter in virtual mode.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 23.09.2021
PY*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI