

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.1787/Mum/2019
(Assessment Year :2012-13)**

M/s. Solidity Developers Pvt. Ltd., Maratha Mandir Annex Maratha Mandir Marg Babasaheb Gawde Chowk Mumbai Central Mumbai – 400 008	Vs.	DCIT-11(2)(2) 421, Aayakar Bhavan 4 th Floor, M.K. Road Mumbai – 400 020
PAN/GIR No.AAOCSS0518G		
(Appellant)	..	(Respondent)

Assessee by	Shri Pavan Ved
Revenue by	Shri Pankaj Kumar
Date of Hearing	05/10/2021
Date of Pronouncement	08/10/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.1787/Mum/2019 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-18, Mumbai in appeal No.CIT(A)-18/IT-10219/DCIT-11(2)(2)/17-18 dated 05/03/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 10/02/2015 by the Id. Dy. Commissioner of Income Tax-11(2)(2), Mumbai (hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds:-

“Being aggrieved by the Appeal Order of the Learned Commissioner of Income Tax (Appeals) - 18 (Hereinafter referred to as the "CIT(A)-18") with regards the assessment order u/s 143(3) of the Act of the Deputy Commissioner of Income Tax - 11 (2) (2), Mumbai, (hereinafter referred to as the "LAO"), this appeal petition is submitted on the following grounds: -

1. *On the facts and circumstances of the case and in law, the Learned CIT(A)-18 has erred in upholding the order of the Learned Assessing Officer ("LAO") assessed u/s 143(3) of the Income Tax Act, on the following;*
 - a. *The Id. CIT(A)-18 erred in not condoning delay in filing appeal before him.*
 - b. *The Id. CIT(A)-18 erred in not considering the strong merits of the case which is based on Hon'ble SC decision and this all the more justifies condoning the delay*
 - c. *Disallowance of interest expense for non-payment of tax deducted at source u/s 40(a)(ia) of the Act, amounting to Rs.3,74,28,580/-.*
 - d. *Disallowance of Interest paid on delayed profession tax amounting to Rs.2,500/-.*
 - e. *Disallowance of interest paid on delayed payment of Tax Deducted at Source (TDS) amounting to Rs.37,909/-.*
2. *The order under appeal is not only bad in law and invalid, but also against the natural law of equity and justice.*
3. *That the appellant reserves its rights to amend, alter or raise any other additional grounds of appeal before or during the course of appellate proceedings.”*

3. We have heard rival submissions and perused the materials available on record. We find that the assessee had filed its return of income for the A.Y.2012-13 on 28/09/2012 declaring loss of Rs.3,76,24,237/-. This return was processed u/s.143(1) of the Act. Later in the scrutiny assessment proceedings completed u/s.143(3) of the Act on 10/02/2015 a sum of Rs. 3,74,28,580/- representing interest to City Gold Investment Pvt. Ltd. was disallowed u/s.43B of the Act. The Id. AO observed that the assessee has advanced loans to the tune of Rs.37.05 Crores to Well-Groomed Joint Venture without charging any interest on

one hand, whereas on the other hand, it had paid interest on its borrowings. We find that the Id. AO had made the disallowance of interest u/s.43B of the Act. He also observed that the said interest was subjected to deduction of tax at source but the TDS was not remitted, hence, the interest expenditure becomes alternatively disallowable for violation of provisions of Chapter XVIIIB of the Act. Apart from this, the Id. AO also made disallowance of delayed interest on professional tax of Rs.2500/- and delayed interest of TDS of Rs.37,909/- in the assessment.

3.1. The assessee company based on the advice given by the in-house Chartered Accountant sought not to prefer any appeal before the Id. CIT(A) against this assessment order. The Id. AR pointed out that thereafter, when penalty was levied by the Id. AO and that penalty was confirmed by the Id. CIT(A), prosecution proceedings were initiated on the assessee company. This prompted the assessee company to seek a second opinion from a legal expert, who had advised the assessee company to prefer an appeal before the Id. CIT(A) along with delay condonation petition. Hence, the appeal was preferred by the assessee before the Id. CIT(A) with a delay of 1081 days. The Id. CIT(A) did not condone the delay and dismissed the appeal of the assessee as according to him the delay was not properly explained by the assessee.

4. Being aggrieved, the assessee has preferred appeal before us on the grounds mentioned hereinabove.

5. At the outset, we find that the Id. CIT(A) had not adjudicated the issue on merits of the additions. The appeal has been dismissed by the Id. CIT(A) only on the ground of not condoning the delay thereon. It is not in dispute that there was a delay in filing of appeal by the assessee

by 1081 days. But we find that assessee has duly explained the circumstances under which a decision was taken for not preferring any appeal. We also find that the Chartered Accountant who advised the assessee has also filed an affidavit confirming the aforesaid facts which is enclosed in page 13 of the paper book. Subsequently, when the penalty and prosecution proceedings were launched on the assessee, the assessee based on an expert advice (second opinion), decided to file an appeal before the Id. CIT(A). This, in our considered opinion, constitute a reasonable cause, as the law is very well settled that mistake of the Counsel in not suggesting the assessee to prefer an appeal should not result in assessee getting fastened with penal damages together with tax and interest liability thereon. Before us, the Id. AR vehemently argued that the assessee had got a good case on merits and that the said disallowance of interest, among others, cannot be made at all in the hands of the assessee company. But we are not inclined to get into the merits of the additions in this appeal as the Id. CIT(A) had not addressed the merits at all. Considering the totality of facts and circumstances, we direct the Id. CIT(A) to condone the delay in filing of the appeal by the assessee, admit the appeal of the assessee for adjudication and adjudicate the issues on merits. Needless to mention that assessee be given reasonable opportunity of being heard. The assessee is also directed to co-operate with the Id. CIT(A) for expeditious disposal of this appeal and not to take any adjournment except due to unavoidable or exceptional circumstances. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 08/10/2021 by way of proper mentioning in the notice board.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/10/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai