

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.581/Del/2018
Assessment Year: 2016-17

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| M/s. P.P. Auto Innovators, 231, Kalyan Vihar, Delhi | Vs. | Income Tax Officer, Ward-36(4), New Delhi |
| PAN :AALFP4647H | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Sh. Rajiv Saxena, Adv. Sh. Ms. Sumangla Saxena, Adv. |
| Respondent by | Sh. Anil Gandhi, Sr. DR |

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| Date of hearing | 13.10.2021 |
| Date of pronouncement | 13.10.2021 |

ORDER

PER O.P. KANT, AM:

This appeal has been preferred by the assessee against the order dated 28/09/2017 passed by the learned Commissioner of Income-tax (Appeals)-12, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2016-17 raising following grounds:

1. *That, the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in passing an order under section 250(6) of the Income Tax Act, 1961 by dismissing the*

appeal of the appellant ex parte, thereby, violating the principles of natural justice.

2. *That the learned Commissioner of Income tax (Appeals) has overlooked the provisions of section 250(6) of the Act, as the order passed by him is non speaking and without affording proper opportunity of being heard to the appellant.*
3. *That the Id Commissioner of Income tax(Appeals) has ignored the judicial ruling in Gujrat Themis Biosyn Ltd. (74 ITD 339 Ahd. ITAT), wherein it was held that section 250(6) makes it obligatory for the Commissioner of income tax (Appeals) to pass a speaking order deciding the points raised in appeal, stating his reasons for the decision, as such.*
4. *That on the facts and circumstances of the case the order passed by the Learned Commissioner of Income tax (Appeals) is bad both in the eyes of law and on facts.*
5. *That the intimation so received u/s 143(1) of the Income Tax Act, 1961 disallowing assessee's claim of exemption u/s 80IC of the Income Tax Act, 1961 is bad in law and devoid of merits.*
6. *That since the assessee was prevented by reasonable cause from filing the return of income for the A.Y.2016-17 within the statutory time limit prescribed u/s. 139[1] of Income Tax Act, 1961, the claim of deduction u/s.80IC as made by the appellant deserves to be accepted as per past history of the appellant.*
7. *That the disallowance of exemption u/s 80IC of the Income Tax Act, 1961 is also bad at law and against the ratio as held in the case of ITO v S. Venkataiah by Hon'ble ITAT, Hyderabad Bench in ITA Number 984/Hyd/2011, issue was exactly similar with assessee's case. The said ratio has been held by various courts and tribunals.*
8. *That on facts and circumstances of the case, the charging interest u/s 234A,B,C is illegal, arbitrary and against the settled law on the subject.*
9. *That the appellant craves to reserve to itself the right to add, alter, amend, substitute and vary any ground of appeal at and before the time of hearing.*

It is, therefore, prayed that the additions/disallowances made as above be deleted. The interest as charged be cancelled and the appeal be allowed.

2. Briefly stated facts of the case are that the assessee preferred appeal before the Ld. CIT(A) against order dated 30/12/2016 passed under section 143(1) of the Income-tax Act, 1961 (in short 'the Act') by the DCIT, Central Processing Centre, Bangalore. The Ld. CIT(A) observed that appeal was belated and no application for condonation of the delay was filed by the assessee. The Ld. CIT(A) has noted that even the assessee had filed factually incorrect information i.e. 'no delay' in the relevant column of the pro-forma for filing appeal. No compliance of notice sent by the Ld. CIT(A) for fixing the date of the hearing was made by the assessee. In view of the facts, the Ld. CIT(A) treated the appeal as invalid.

3. We have heard learned Representatives from both sides. Before Tribunal, the assessee has sought adjournment on many occasions. The hearing of appeal was adjourned from 17/02/2021 to 11/03/2021, on the request of learned counsel of the assessee. The matter was further adjourned on three occasions, i.e., 11/03/2021, 15/07/2021 and 20/09/2021. Before us, on 13/10/2021, the learned counsel for the assessee again requested for adjournment for filing additional ground in the appeal. In view of repeated adjournments sought by the learned Counsel of the assessee and issue-in-dispute involved in appeal not decided by the Learned CIT(A) on the merit, the adjournment application of the assessee was rejected.

3.1 We have noted that learned CIT(A) has rejected the appeal of the assessee holding it as invalid. The appeal by the assessee is a substantial right and which should not be denied on the ground of no condonation application filed. In the interest of substantial

justice, we feel it appropriate to restore the matter back to the file of Ld. CIT(A) with the direction to the assessee to appear before the Ld. CIT(A) along with application for condonation of the delay in filing of appeal. The Ld. CIT(A) may consider condonation of the delay in filing appeal as per law and thereafter, he may decide the appeal on merit. The assessee is at liberty to raise any additional ground before the Learned CIT(A), which the Ld. CIT(A) may decide in accordance with law.

4. In view of the above, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13th October, 2021

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 13th October, 2021.

RK/-(DTC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi