

THE INCOME TAX APPELLATE TRIBUNAL
“F” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 567/Mum/2020 (Assessment Year 2006-07)
I.T.A. No. 568/Mum/2020 (Assessment Year 2007-08)
I.T.A. No. 569/Mum/2020 (Assessment Year 2008-09)
I.T.A. No. 570/Mum/2020 (Assessment Year 2009-10)
I.T.A. No. 571/Mum/2020 (Assessment Year 2010-11)

I.T.A. No. 237/Mum/2020 (Assessment Year 2006-07)
I.T.A. No. 238/Mum/2020 (Assessment Year 2007-08)
I.T.A. No. 239/Mum/2020 (Assessment Year 2008-09)
I.T.A. No. 240/Mum/2020 (Assessment Year 2009-10)
I.T.A. No. 241/Mum/2020 (Assessment Year 2010-11)
I.T.A. No. 572/Mum/2020 (Assessment Year 2011-12)

I.T.A. No. 7382/Mum/2019 (Assessment Year 2006-07)
I.T.A. No. 7383/Mum/2019 (Assessment Year 2007-08)
I.T.A. No. 7384/Mum/2019 (Assessment Year 2008-09)
I.T.A. No. 7385/Mum/2019 (Assessment Year 2009-10)
I.T.A. No. 7386/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 7387/Mum/2019 (Assessment Year 2011-12)

I.T.A. No. 7376/Mum/2019 (Assessment Year 2006-07)
I.T.A. No. 7377/Mum/2019 (Assessment Year 2007-08)
I.T.A. No. 7378/Mum/2019 (Assessment Year 2008-09)
I.T.A. No. 7379/Mum/2019 (Assessment Year 2009-10)
I.T.A. No. 7380/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 7381/Mum/2019 (Assessment Year 2011-12)

Vama Private Limited (Formerly known as Vama Department Store Pvt. Ltd.) Kanchanjunga, 72, Peddar Road, Mumbai-400 026. PAN : AAACV1262E (Appellant)	Vs.	DCIT/ACIT Circle-5(3) M.K. Road Aayakar Bhavan Mumbai-400 020. (Respondent)
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Assessee by	Shri Prakash Jotwani
Department by	Shri Achal Sharma
Date of Hearing	02.02.2022
Date of Pronouncement	04.02.2022

ORDER

Per Bench :

ITAT Nos. 567 to 571/Mum/2020 :-

2. These are appeals by the assessee against respective orders of learned CIT(A) pertaining to confirming the addition on merit.
3. Since facts are similar we are referring to ITA No. 567/Mum/2020 for A.Y. 2006-07.
4. The issue raised in this appeal read as under :

Ground No. 1 : Exparte Order

1. The CIT(A) erred in dismissing the appeal and passing an exparte order, without giving the Appellant sufficient opportunity of being heard and erred in not granting time to the Appellant for appointing professional lawyers to represent the case properly.

2. The CIT(A) erred in not deciding the appeal on merits of the case without being properly represented and erred in dismissing the appeal in the absence of the Appellant or its representative. Sri Prabodh Das vs. Mahamaya Das (SC).

3. Without prejudice to Ground No. 1 & 2 the learned CIT(A) erred in not disposing the grounds of appeal on merits as held by various High Courts decisions (Smt. Ritha Sabapathy Vs DCIT (Madras High Court))

Ground No. 2 : Condonation of delay

1. The learned CIT(A) erred in dismissing the appeal and not condoning the delay of 336 days in filing the appeal, although the Appellant had filed a detailed Affidavit explaining the difficulty in filing the return of income and the appeal to first appellant authority within the specified time limit.

Without prejudice to Ground No. 1 & 2, grounds

Ground No. 3: Rent from Varna Apparels India Pvt. Ltd.

1. The learned CIT(A) erred in confirming the addition of Rs. 2,00,20,500/- being the alleged differential unaccounted rent and service charges purportedly received by the Appellant on the basis of a debit note found during survey conducted u/s. 133A on 25-11-02, in the premises of Vama Apparels India Pvt. Ltd (VAIPL).

2. The learned CIT(A) failed to take into consideration that the debit note seized by the department from VA IPL was for A.Y. 1999-2000 and pursuant to assessment concluded for VA IPL, no addition was made as undisclosed income or any unaccounted cash generation or any additional amount paid to Appellant on account of alleged debit note.

3. The learned CIT(A) failed to take into consideration the following orders, wherein the addition has been deleted in the hands of VA IPL and therefore no consequent addition can be made in the hands of the Appellant.

AY : 2000-01 : Asst Order dated 30-12-2011
AY : 2001-02 : Asst Order dated 30-12-2011
AY : 2002-03 : Asst Order dated 23-12-2011
AY : 2004-05 : Asst Order dated 29-12-2008

Ground No. 4 : Rent from Varna Ford Motors Pvt. Ltd.

1. The learned CIT(A) erred in confirming the estimated addition of Rs. 1,51,04,400/- on the allegation that, Varna Ford Motors Pvt. Ltd. (VML) occupied part of the premises along with VA IPL and was paying rents in cash to the Appellant, whereas infact VML had vacated the premises since A.Y. 2001-02 and consequently there was no scope for department's contention that cash was siphoned from its petty Cash account.
2. The learned CIT(A) failed to take into consideration the following orders wherein the addition has been deleted in the hands of VML and therefore no consequent addition can be made in the hands of the Appellant.

AY : 2000-01 : CIT(A)'s Order dated 18-12-2003
AY : 2001-02 : CIT(A)'s Order dated 18-12-2003

Ground No. 5 : Business Income of Rs. 5,00,000/-

The learned CIT(A) erred in making an addition of Rs. 5,00,000/- to the business income purely on a presumption and on an absurd basis, that the Assessee has been declaring business loss in the previous years.

Ground No. 6 : Rental income from Italian embassy - Rs. 1,00,00,000/-

The learned AO erred in estimating income from the Italian Embassy/Consulate to whom the Appellant's premises have been given out on leave and license basis at Rs. 1 crore, instead of restricting the actual income earned.

Ground No. 7 : Interest u/s. 234A & 234B The learned AO erred in levying interest u/s. 234A & 234B

The Appellant craves leave to add, alter or amend the Grounds of Appeal at or before the hearing of the appeal.”

5. Brief facts are that the assessee is the owner of showroom at Peddar Road, Mumbai. The Assessing Officer noted that the brand name 'Vama' is a very well known in south Mumbai mostly patronized by higher income group. He noted that part of the premises was given to the group concerns. That during the course of survey u/s. 133A of the I.T. Act in the case of one of the group concern on 25.11.2002 a debit note was found as per which another group company paid service charges to the assessee-company amounting to Rs. 2,00,20,500/-. The Assessing Officer noted that an addition of Rs. 2,00.20,500/- was made on account of rent and service charges received from M/s Vama Apparel (India) Pvt. Ltd. and on the similar lines, additions was made by way of unaccounted rent and service charges from Varna Ford Motors Pvt. Ltd. at Rs. 1,51,04,400/- for the A.Ys. 2002-03, 2002-03 and 2003-04 and after reducing the rent and service charges declared by the assessee, the balance amount was added to the assessee's total income. Further the Assessing Officer referred to the assessment in the case of group concern. He held as under :-

Based on the preceding assessment orders, rent/compensation from M/s Vama Apparel (India) Pvt. Ltd. and M/s Varna Motors Pvt. Ltd. as computed above of Rs. 3,51,24,900/- is assessed to tax under the head Income from House Property for AY 2006-07. In absence of any details assessee is not allowed any deduction in respect of Municipal Taxes paid. However, assessee is allowed deduction u/s 24(a) of the I. T. Act. Penalty proceedings are initiated u/s 271(1)(c) of the Income-tax Act, 1961.

6. The Assessing Officer made further additions as under :-

The assessee is also deriving rental income from letting off of its premise to Italian Embassy. Since, the assessee has not filed its return of income in the current year, on the basis of preceding assessment years, rental income from Italian Embassy is taken at Rs. 1 crore, which is taxed under the head Income from House Property.

It is seen from records that the assessee has been declaring loss from business in preceding assessment years. In absence of return of income and any details of the business, the income from Business or profession is taken at Rs. 5,00,000/-.

7. Against the above order assessee appealed before learned CIT(A). Learned CIT(A) passed a common order for A.Ys. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2012-13. Learned CIT(A) passed a very brief order and dismissed the appeal for non-condonation of delay 336 days. The order of learned CIT(A) read as under :-

“The brief facts of the case are that the assessee company is the owner of Air Conditioned Show Room in a well known building " Kanchanjunga' on Pedder Road, Mumbai. The Brand Name is" VAMA. A part of the premises was given to M/s. Vama Appearls Indian Pvt. Ltd (VAIPL) and M/s. Vama Motors Ltd.(VML), both group concerns. There was a survey u/s. 133A in the case of VAIPL on 25/11/2002, wherein a debit note was found as per which VAIPL paid service charges to the assessee company amounting to Rs. 2,00,20,500/- during that year. An addition of Rs. 2,00,20,500/- was made on account of rent and service charges received from VAIPL, and on the similar lines, additions were also made by way of unaccounted rent and service charges from Vama Motors Ltd, at Rs. 1,51,04,400/- for the AYs. 2001-02, 2002-03 and 2003-04 and after allowing eligible deductions from rental income, the balance amount was added to the assessee's total income. For the present assessment years the appellant has not filed return of income on time despite having taxable income in the form of rental income and suddenly started this from VAIPL. Therefore, a notice u/s. 148 of the Act, dated 28/03/2013 was issued and served upon the assessee on 30/03/2013. In response to this notice the appellant has file a letter dt. 30.4.2013 signed by Smt Induben P Patel, one of the directors of the company stating that there is a dispute inter-se, share holders in the case of M/s Tulsidas V Patel Pvt Ltd (TVPPL), of which the assessee is a 100% subsidiary and Court Receiver/Administrator has been appointed by the Hon'ble Mumbai High Court. Since the Administrator also exercises indirect control over subsidiaries as well, they claimed that it is not possible to comply with the legal/statutory requirements. However, no returns have been filed. The assessment has been passed accordingly on 14/03/2014 u/s. 143(3) r.w.s. 147 of the Income-tax Act, by making certain additions. Aggrieved the appellant has filed this appeals.

4. As per form No. 35, demand notices for all these 6 years were served on the appellant on 21/03/2014. In view of the provisions contained in section 249(2) of the I.T. Act, the appeal was required to be filed within 30 days from the date of service of the notice of demand. Therefore, the appellant was required to file the appeal by 21/04/2014. However, the appeals of the above six years have been filed on 23/03/2015 with a delay of 336 days. The appellant has filed an application seeking condonation of delay along with an affidavit, along with form No. 35. The reasons stated in the affidavit are the internal differences among the family members who are the shareholders of Tulsidas V Patel Pvt Ltd. (TVPPL) to which the appellant company is a subsidiary.

4.1 The explanation given by the appellant is not convincing. It is seen from the details submitted in the affidavit, there was a suit filed in 2005 (suit number 2435 of 2005) before the Hon'ble High Court of Mumbai which is still pending. But when the AO has issued notice under section 148 on 28/3/2013 the appellant has not filed any return of income except a letter dated 30/4/2013 stating that it could not file any return of income due to dispute among the shareholders of Tulsidas V Patel Pvt. Ltd.(TVPPL) to which the appellant company is a subsidiary. The AO has finally passed his order on 14/03/2014 u/s 143(3) r.w.s. 147 after giving several opportunities. After receipt of the orders of the AO on 21/3/2014 again the appellant has shown laxity and delayed filing the present set of appeals within the time specified under section 249 (2) of the Act giving again similar reasons. When the case was posted for hearing again and again by the undersigned the same laxity was shown again by stating that they are in the process of hiring senior tax consultants to represent our case before which will take some time. From the above it is evident that the appellant is a habitual defaulter in response to the notices issued by the Department and the explanation given in the affidavit for the delay of 336 days in filing the appeals is not satisfactory. Therefore, the delay cannot be condoned and accordingly the appeal filed by the appellant is not admitted.

4. In the result, the six appeals filed for all the AYs from 2006-07 to 2011-12 are dismissed as non- maintainable.”

8. Against the above order the assessee is in appeal before us.

9. We have heard both the parties and perused the records. Learned counsel submitted that there was reasonable cause on the part of the assessee due to which there was delay in filing the appeal before learned CIT(A). He submitted that on the facts and circumstances of the case in the interest of justice delay ought to have been condoned. He referred to the affidavit from the director of the company submitting reason of delay before learned CIT(A). In the affidavit it was pointed out that the delay in preparation and filing of appeal was not intentional but was due to litigation in the family members of the assessee group. Affidavit by the said director runs into five pages explaining reasonable cause for the delay. In the said affidavit even family dispute was also mentioned in detail. Against the above five pages circumstances narrated, learned CIT(A) did not even bother to advert to reasonable cause submitted and why the same should not be admitted. In one line he held that the reason is not satisfactory and cannot be condoned. He did

not even bothered to mention what was the reason mentioned. The above clearly betrays lack of application of mind by learned CIT(A) on the reasonable cause for the delay submitted. We have applied our mind to the reasonable cause submitted and in our considered opinion reasonable cause attributed ought to have been accepted. Moreover learned Counsel submits that addition made on similar basis in the case of same assessee for earlier other years have been remanded to the file of the Assessing Officer and this fact also needs to be borne in this regard. Considering the facts and circumstances narrated above in our considered opinion delay of filing the appeal before learned CIT(A) in this case ought to have been condoned. Hence, in the substantial interest of justice we condone the delay in filing the appeal before learned CIT(A). Since learned CIT(A) has dismissed the appeal in limine without adjudicating upon the merits of the case we remit the issue to the file of learned CIT(A). Learned CIT(A) should treat the delay before him as condoned and pass the order on merit as per law.

10. In the result, assessee's appeals for A.Ys. 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11 are allowed for statistical purposes.

ITA Nos. 237 to 241/Mum/2020 & 572/Mum/2020 :-

11. The issue raised in these appeals are as under :-

“Ground No. 1 : Exparte Order

1. The CIT(A) erred in dismissing the appeal and passing an exparte order, without giving the Appellant sufficient opportunity of being heard and erred in not granting time to the Appellant for appointing professional lawyers to represent the case properly.

2. The CIT(A) erred in not deciding the appeal on merits of the case without being properly represented and erred in dismissing the appeal in the absence of the Appellant or its representative. Sri Prabodh Das vs. Mahamaya Das (SC).

3. Without prejudice to Ground No. 1 & 2 the learned CIT(A) erred in not disposing the grounds of appeal on merits as held by various High Courts decisions (Smt. Ritha Sabapathy Vs DOT (Madras High Court))

Ground No. 2 : Condonation of delay

The learned CIT(A) erred in dismissing the appeal and not condoning the delay of 136 days in filing the appeal, although the Appellant had filed a detailed Affidavit explaining the difficulty in filing the return of income and the appeal to first appellant authority within the specified time limit.

Without prejudice to Ground No. 1 & 2, grounds

Ground No. 3: Penalty u/s. 271(l)(c)

The leaned CIT(A) erred in confirming the penalty u/s. 271(l)(c) of Rs. 1,08,00,630/-made on account of alleged cash rent/service charges received from its sister concerns, VAMA Apparels (I) Pvt. LTD. (VAIPL) and Varna Motors Ltd. (VML), on the basis of a debit note pertaining to A.Y. 1999-2000, found during the survey conducted on VAIPL on 25-11-02 and other additions.

The Appellant craves leave to add, alter or amend the Grounds of Appeal at or before the hearing of the appeal.”

12. We note that these are penalty appeals regarding penalty on the addition on merit as discussed above. The penalty has been levied by the Assessing Officer on the addition sustained. The learned CIT(A) in similar fashion has not condoned the delay of 136 days. We note that on similar reasoning 336 days delay in filing the appeals was not condoned by learned CIT(A) as referred earlier. This we have condoned. On the same reasoning as mentioned above, we condone the delay of 136 days in substantial interest of justice and remit the matter to the file of learned CIT(A) to adjudicate the issue on merit and pass the order as per law. Hence, A.Y.s. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12 which are appeals against penalty under section 271(1)(c) of the Act allowed for statistical purposes.

ITA No. 7376 to 7387/Mum/2019 :-

13. These twelve appeals are in connection with the same addition and penalty as referred above. It has been brought to our notice that learned CIT(A) has passed a similar order for the same issue as above again. Hence, both the parties agreed that these are infructuous appeals in as much as since the

same order of learned CIT(A) has been adjudicated in the above appeals.
Hence, these appeals are dismissed as infructuous.

Pronounced in the open court on 04.02.2022

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 04 /02/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS