

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE  
SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 936/Del/2017  
Asstt. Year : 2011-12

S R Foils & Tissue Ltd., 2 <sup>nd</sup> Floor, Vardhman Plaza-II, J-Block, Community Centre, Rajouri Garden, New Delhi - 110 027 PAN AAACR7410E	Vs.	DCIT Circle-7(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	04.04.2022
Date of pronouncement	25.04.2022

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 21.12.2016 of the Ld. Commissioner of Income Tax (Appeals)-22, New Delhi ("**CIT(A)**") pertaining to the assessment year 2011-12.

2. The assessee is a company engaged in the business of trading of foils and manufacturing and trading of tissue papers. For the assessment year 2011-12, the assessee filed return of income declaring income of Rs. 32,19,20,154/-. The Ld. Assessing Officer ("**AO**") completed the assessment under section 143(3) on 27.03.2014 on total income of Rs. 34,94,35,270/- including therein an addition of Rs. 2,75,15,116/- on account of unexplained cash credit under section 68 of the Income Tax Act, 1961 (**the "Act"**). The Ld. AO initiated penalty proceedings under section 271(1)(c) of

the Act for concealment of income/ furnishing inaccurate particulars of income amounting to Rs. 2,75,15,116/-.

3. During penalty proceedings none attended before the Ld. AO nor any written submission was filed. For the reasons recorded by him in para 5 of his order dated 29.09.2014, the Ld. AO imposed penalty of Rs. 91,37,780/- being 100% of the amount of tax sought to be evaded under section 271(1)(c) of the Act with prior approval of Addl. CIT Range-7, New Delhi.

4. The assessee filed appeal before the Ld. CIT(A) on grounds that imposition of penalty is illegal, unlawful and is against the natural law of justice; that no notice was served upon the assessee, thus any order passed without providing any opportunity to the assessee is not valid in the eye of law; that due to closure/ suspension of business activities the assessee could not pursue the income tax matter; and that the Ld. AO had not established any concealment.

5. The Ld. CIT(A) noticed that the appeal filed by the assessee is late by almost a month and no application for condonation of delay is available on record. According to the Ld. CIT(A), the appeal was first fixed for hearing on 27.07.2015. On that date the assessee requested that the appeal be kept in abeyance till the decision on quantum appeal. The Ld. CIT(A) observed that section 275(1A) takes care of any decision in quantum appeal. He fixed hearing on 19.12.2016 by issue of notice through speed post which was returned unserved as 'unclaimed'. The Ld. CIT(A), therefore, proceeded to decide the appeal on the basis of facts on record.

6. The Ld. CIT(A) disposed of the appeal of the assessee by observing as under :-

*“5. During the course of assessment proceedings, the appellant was asked to furnish the details of creditors and enquiries under Section 133(6) were made in respect of six creditors. Confirmations were not received in case of*

three creditors totalling Rs.61,51,681/- out of six creditors in whose cases, the inquiries under Section 133 (6) were made. Out of those three creditors, the notice under Section 133 (6) was returned unserved in one case. The assessee was informed of the results of inquiries on 18th March, 2014. The assessee was then asked to furnish reply on 24th March, 2014. However, nobody attended on the said date. Therefore, the assessment order was passed on 27th March, 2014 just four days before, the expiry of limitation, making an addition of 50% of total creditors of Rs. 5,50,30,233/-.

6. Under explanation 1(A) to Section 271(1)(c), an addition made becomes deemed concealment, if assessee fails to offer an explanation. Such cases are specifically covered under Clause (A) of explanation (1) (supra). In the present case, the Assessing Officer communicated the results of inquiries to the assessee and the assessee did not offer any explanation. Therefore, the addition made becomes deemed concealment and the Assessing Officer was not required to establish anything further. This has been the basis for imposition of penalty by the AO.

7. During penalty proceedings, two notices under Section 271(1)(c) were issued but were not complied with. The notices were sent by the AO through speed post. Therefore on merits Ground No. 2 & 3 of the appeal are liable to be dismissed. Ground No. 4 & 5 of the appeal are of general nature and do not require separate adjudication. Ground No. 1 & 6 of the appeal are liable to be dismissed as it is a case of deemed concealment as discussed above.

8. However, since, this appeal has been filed late and existence of sufficient cause for delay in filing of appeal has not established, the appeal is not admitted and discussion on merits (supra) becomes an academic discussion only.

9. Therefore, the appeal filed is **dismissed as not admitted.**"

7. The assessee filed appeal against the order of the Ld. CIT(A) before the Tribunal on the ground that Ld. CIT(A)'s order is illegal, unlawful and against the natural law of justice; that no notice has been served upon the assessee, thus Ld. CIT(A) was not justified in passing the order in haste; that sufficient opportunity has not been provided; that disposal of penalty

appeal pending disposal of quantum appeal is not justified; and that confirmation of penalty was not justified.

8. Perusal of record shows the following details of the notice of hearing issued to the assessee by the Tribunal :-

<u>Date of issue of notice</u>	<u>Date of hearing fixed</u>
12.02.2020	31.03.2020
04.02.2021	15.03.2021
09.04.2021	24.05.2021
07.07.2021	09.08.2021
06.09.2021	28.10.2021
22.11.2021	11.01.2022
22.02.2022	04.04.2022

All the notices remained unserved as the assessee 'left' from the given address. There is no hope of service of notice upon the assessee as the assessee has not intimated the change of its address. The Ld. Departmental Representative (**DR**) was present on all the dates of hearing. We, therefore, proceed to decide the appeal after hearing the Ld. DR.

9. It is forthcoming from the records that the assessee submitted a synopsis alongwith grounds of appeal filed before the Tribunal. The contentions raised therein are being dealt with therein below.

9.1 The assessee has brought to the notice of the Tribunal that in assessment years 2005-06, 2007-08 and 2010-11 the income declared by the assessee has been accepted in assessment orders framed under section 143(3). It is well established that each assessment year is separate and distinct and assessment is made on the basis of facts relevant for that year. In the assessment year 2011-12 under consideration, it is revealed from the penalty order that huge addition under section 68 has been made. This has formed the basis of imposition of the impugned penalty. Therefore, the

assessment order of preceding assessment year (s) cannot come to the rescue of the assessee.

9.2 It is also stated by the assessee in the said synopsis that adhoc addition of 50% of sundry creditors was made merely on non-compliance of notice under section 133(6) by three parties out of six parties and that confirmation of all six parties were on record. It is also stated that the quantum appeal is still pending and therefore disposal of penalty appeal is not justified.

9.3 The record of the Tribunal reveals that the assessment order for the assessment year 2011-12 has not been filed by the assessee alongwith the appeal in the Tribunal. The Ld. DR has also not apprised us about the present status of the quantum appeal. Nonetheless the legal position is that the onus of proving the nature and source of credit entries in its books of account lies on the assessee. It is for the assessee to offer explanation to the satisfaction of the Assessing Officer. If an assessee fails to do so and the identity of the creditor, his creditworthiness and genuineness of the transaction remains unproved, the sum so credited may be charged to income tax as the income of the assessee under section 68 of the Act. Levy or otherwise of the penalty relating thereto would depend on the facts and circumstances of each case.

9.4 There is not statutory bar on passing penalty order pending appeal against an assessment order as remedy in such cases is provided in section 275(1A) which permits revision of the penalty order in conformity with the appellate order(s) in quantum appeal.

10. We have gone through the orders of the Ld. AO/CIT(A), perused the material on record and heard the Ld. DR. It is observed from the appellate order of the Ld. CIT(A) that he has dismissed the appeal filed by the assessee as not admitted for the reason that the appeal had been filed late and existence of sufficient cause had not been established by the assessee before

him. As regards merits the Ld. CIT(A) observed that under Explanation 1(A) to section 271(1)(c), an addition made becomes deemed concealment, if assessee fails to offer an explanation. According to him the Ld. AO had communicated the results of inquiries to the assessee and assessee did not offer any explanation. Therefore, the addition becomes deemed concealment and the Ld. AO was not required to establish anything further. Discussion on merits has been held by the Ld. CIT(A) as academic only.

11. The Ld. CIT(A) found that the assessee presented his appeal before him late in violation of the provision of sub section (2)(b) of section 249 of the Act. No doubt that sub-section (3) of section 249 empowers the Ld. CIT(A) to admit an appeal after the expiry of 30 days mentioned in sub-section (2) of section 249 if he is satisfied that the assessee had sufficient cause for not presenting the appeal within that period. We are conscious that the Ld. CIT(A) has to exercise his discretion under section 249(3) in judicious manner but in the case under consideration the assessee did not submit even an application for condonation of delay. Curiously enough, there is no whisper anywhere in the records of the Tribunal also that the appeal of the assessee has been dismissed by the Ld. CIT(A) as it was not presented within the period allowed under section 249(2)(b) of the Act. Thus, the finding of the Ld. CIT(A) remains uncontroverted.

12. It is a clear case of negligence and inaction on the part of the assessee. In DCIT vs. Jaya Publications (2009) 309 ITR (AT) 245 (Chennai), the Chennai Bench of the Tribunal held that in the absence of any acceptable reason and where there was actually negligence and in action the delay could not be condoned. In the case before us the appeal was not presented before the Ld. CIT(A) within 30 days of service of notice of demand. It was presented nearly after a month of the expiry of that period. No reasons for the delay have been given either before the Ld. CIT(A) or before the Tribunal. We, therefore, decline to interfere with the decision of the Ld. CIT(A) in this regard.

13. As regards merits of the case, the assessee has neither appeared before the Ld. CIT(A) nor before us. We have dealt with the contentions raised by the assessee in the synopsis filed before us along with the appeal.

14. The findings of the Ld. AO/ CIT(A) remain uncontroverted. We, therefore, decline to interfere.

15. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open court on 25<sup>th</sup> April, 2022.**

sd/

**(G. S. PANNU)**

**PRESIDENT**

sd/--

**(ASTHA CHANDRA)**

**JUDICIAL MEMBER**

Dated: 25/04/2022

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	

The date on which the file goes to the Assistant Registrar for signature on the order	
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