

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.513/Del./2020  
(ASSESSMENT YEAR : 2011-12)**

**ITA No.524/Del./2020  
(ASSESSMENT YEAR : 2011-12)**

**ITA No.512/Del./2020  
(ASSESSMENT YEAR : 2011-12)**

SMV Agencies Pvt. Ltd., vs. DCIT, Central Circle 7,  
S-25, FF, Green Park, Main Market, New Delhi.  
New Delhi – 110 016.

**(PAN : AAACS3405J)**

**ITA No.511/Del./2020  
(ASSESSMENT YEAR : 2011-12)**

SMV Beverages Pvt. Ltd., vs. DCIT, Central Circle 7,  
S-25, Green Park, Main Market, New Delhi.  
New Delhi – 110 016.

**(PAN : AADCS8973L)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Ms. Kanika Jain, CA  
REVENUE BY : Shri Abhishek Kumar, Sr. DR

Date of Hearing : 04.07.2022  
Date of Order : 07.07.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These are appeals by the two assesseees against the respective orders of the ld. CIT (Appeals).

2. Since the appeals were heard together and have some common features, they are being consolidated and disposed off by this common order.

**ITA NO.513/DEL/2020**

3. The issues raised by the assessee in this appeal are as under :-

“1. The order passed by the ld. Assessing Officer (“Ld. AO”) under section 147 r.w.s. 143 (3) of the Act, is bad in law and on the facts and circumstances of the case.

2. The Ld. AO has erred in law and on the facts and circumstances of the case in making additions under Section 68 of Rs.75,00,000/- to the total income of the Appellant.”

4. Brief facts of the case are that assessment was framed under section 147 r.w.s. 143(3) of the Income-tax Act, 1961 (for short ‘the Act’) vide order dated 29.12.2017. In the assessment order, Assessing Officer (AO) disallowed additional depreciation claimed amounting to Rs.75,00,000/- by holding the transaction to be not genuine.

5. Upon assessee’s appeal, ld. CIT (A) noted that assessee was not interested in prosecution inasmuch as no compliance was being made to the notices. Hence, ld. CIT (A) held that appellant was not interested in prosecuting the appeal. He further noted that there is 267 days delay in filing the appeal. Reasonable cause was submitted that company’s concerned person dealing with Income-tax Department has left the

service and papers were not properly arranged. Ld. CIT (A) did not consider the merits of the submission only on the ground that a separate condonation petition has not been filed. Hence he dismissed the appeal holding that this appeal is not maintainable being barred by time limitation.

6. Against the above order, assessee is in appeal before us.

7. We have heard both the parties and perused the record.

8. Ld. Counsel of the assessee pleaded that there was genuine reason for non-appearance before the Id. CIT (A) as assessee's company is virtually closed down; that Id. CIT (A) has dismissed the appeal for non-prosecution and at the same time rejected the plea of condonation only on the technical ground that necessary petition was not filed despite the reason being explained. She prayed that the matter may be remanded back to Id. CIT (A) after condoning the delay and she also undertook to cooperate with the proceedings before the Id. CIT (A).

9. Per contra, Id. DR for the Revenue did not dispute the proposition as canvassed above.

10. Upon careful consideration, we note that the Id. CIT (A) has dismissed the appeal for non-prosecution and at the same time, held that the delay was not to be condoned as proper application was not filed though the reason was explained. In our considered opinion and in the interest of justice, delay before Id. CIT (A) shall stand condoned and the

matter needs to be remitted back to the file of Id. CIT (A) to decide the issue afresh on merits after giving the assessee's proper opportunity of being heard. Ld. counsel of the assessee undertook that she will cooperate with the proceedings before the Id. CIT (A). We order accordingly.

**ITA NO.524.DEL/2020**

11. This appeal by the assessee is with respect to penalty u/s 271(1)(c) of the Act levied in connection with the above appeal of quantum. Ld. CIT (A) in this appeal also held that the appeal was liable to be dismissed for non-prosecution and further noted that there was delay of 89 days in filing the appeal and dismissed the appeal also as time barred.

12. On the same reasoning as mentioned in the quantum appeal herein above and also the fact that we have remitted the appeal to the file of Id. CIT (A), we deem it appropriate to remit this issue also to the file of Id. CIT (A). Delay before Id. CIT (A) shall stand condoned and Id. CIT (A) shall decide the appeal afresh on merits after providing an appeal of being heard to the assessee. Ld. counsel of the assessee undertook that she will cooperate with the proceedings before the Id. CIT (A). We order accordingly.

**ITA NO.512/DEL/2020**

13. This appeal by the assessee is against the order of Id. CIT (A) dated 27.11.2019 for AY 2011-12. The assessee has taken the following grounds of appeal :-

“1. The reassessment order passed by the Id. Assessing Officer (Ld. AO) under section 147 r.w.s. 148/143(3) of the Act, is bad in law and on the facts and circumstances of the case.

2. The notice under section 148 issued by Ld. AO is bad in law and liable to be quashed.

3. The Id. AO has erred in law and on the facts and circumstances of the case in making additions under section 68 of Rs.1,30,00,000/- to the total income of the Appellant.”

14. In this case, there was reopening and assessment was framed u/s 147 r.w.s. 148/143(3) of the Act. In the assessment order, AO made addition of Rs.1,30,00,000/- for non-genuine sale transaction. Upon assessee's appeal, Id. CIT (A) noted that the assessee is not interested in prosecution. He held that assessee was not serious and therefore, considered the case on merits also and confirmed the AO's action by basically reproducing the AO' observation.

15. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the record.

16. Ld. counsel of the assessee contended that the assessee was facing genuine hardship on account of closure of the business; that this led to the non-appearance before the Id. CIT (A). She pleaded that the matter

should be remanded back to ld. CIT (A) and an opportunity of being heard should be granted to the assessee to canvass the appeal before the ld. CIT (A). She promised that she will cooperate with the proceedings before the ld. CIT (A).

17. Ld. DR of the Revenue submitted that ld. CIT (A) has also considered the merits of the case, hence pleaded that the assessee's appeal should be dismissed.

18. Upon careful consideration of the facts and circumstances of the case and the reasons submitted for non-appearance before the ld. CIT (A), we find some cogency in the assessee's submission and in the interest of justice, we remit the appeal to the file of ld. CIT (A) to decide the issues afresh by passing a speaking order after giving an opportunity of being heard to the assessee. Ld. counsel of the assessee is also directed to cooperate with the proceedings before the ld. CIT (A).

**ITA NO.511/DEL/2020**

19. This appeal by the assessee is directed against the order of ld. CIT (A) dated 27.11.2019 pertaining to AY 2011-12.

20. The grounds of appeal taken by the assessee read as under :-

“1. The reassessment order passed by the ld. Assessing Officer (Ld. AO) under section 143 r.w.s. 147 of the Act, is bad in law and on the facts and circumstances of the case.

2. The notice under section 148 issued by Ld. AO is bad in law and liable to be quashed.

3. The Id. AO has erred in law and on the facts and circumstances of the case in making additions under section 68 of Rs.75,00,000/- to the total income of the Appellant.”

21. In the assessment AO made addition of Rs.75,00,000/- holding the transaction with M/s. RKG Finvest Ltd. to be not genuine. Upon assessee's appeal, Id. CIT (A) noted that assessee was not interested in prosecuting the appeal, hence he held that appeal is liable to be dismissed for non-prosecution. Further, he also referred to merits of the case and confirmed the AO's order.

22. Against the above order, assessee is in appeal before the ITAT. We have heard both the parties and perused the record.

23. The plea of the Id. counsel of the assessee is similar to the one canvassed in the other appeal above where she has prayed that there were genuine reasons with relation to closure of the assessee's business and non-appearance before the Id. CIT (A). She pleaded that as in the above cases, this issue may also be remanded to the file of Id. CIT (A) and an opportunity may be granted to the assessee to canvass the case. She also promised to cooperate with the proceedings before the Id. CIT (A).

24. Id. DR similarly submitted that Id. CIT (A) has decided the appeal on merits also, hence assessee's appeal should be dismissed.

25. Upon careful consideration, we find some cogency in the assessee's plea and since we have already remitted the above group

appeals to the file of Id. CIT (A) to decide afresh and grant an opportunity to the assessee in the interest of justice, we deem it appropriate to remand this appeal to the Id. CIT(A). Ld. CIT (A) shall pass a speaking order after giving the assessee an opportunity of being heard. Ld. counsel of the assessee undertook that she will cooperate with the proceedings before the Id. CIT(A).

26. In the result, all the appeals of the assessee are allowed for statistical purposes.

**Order pronounced in the open court on this 7<sup>th</sup> day of July, 2022.**

**Sd/-  
(CHANDRA MOHAN GARD)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 7<sup>th</sup> day of July, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**

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