

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VP AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. Nos. 919/Mum/2022
(निर्धारण वर्ष / Assessment Year:2014-15)
&
आयकर अपील सं/ I.T.A. Nos. 920/Mum/2022
(निर्धारण वर्ष / Assessment Year:2013-14)
&
आयकर अपील सं/ I.T.A. Nos. 922/Mum/2022
(निर्धारण वर्ष / Assessment Year:2010-11)

Advantage Overseas Pvt. Ltd. 414, A- Wing Express Zone, Off Western Express Highway Malad (E), Mumbai-400097.	बनाम/ Vs.	DCIT-1(1) Bhopal.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAECA8925F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Dr. Mahesh Akhade (DR)	

सुनवाई की तारीख / Date of Hearing: 30/06/2022
घोषणा की तारीख /Date of Pronouncement: 30/06/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. CIT(A)-53, Mumbai dated 18.02.2022 for AYs. 2014-15 & 2013-14; and order dated 11.02.202 for AY 2010-11.

For AY. 2014-15 (ITA. No. 919/Mum/2022)

2. The ground no. 1 of the assessee is against the action of the Ld. CIT(A) passing the impugned order without providing the assessee adequate opportunity of being heard. Having gone through the



impugned order of the Ld. CIT(A), it is noted that the Ld. CIT(A) had given two opportunities to the assessee by listing the appeal twice on 03.12.2021 and on 08.02.2022; and finding that non-appeared before him on behalf of assessee, he was pleased to dismiss the appeal of the assessee without going into the merits of the appeal. We note that the first date of hearing was fixed on 03.12.2021 which was during the Covid/Pandemic. And thereafter it was fixed on 08.02.2022 and the Ld. CIT(A) has dismissed the grounds of appeal raised by the assessee, without going into the merits of the case, which impugned action of the Ld. CIT(A) cannot be countenanced. As per the Section 250(6) of the Income Tax Act, 1961 (hereinafter “the Act”) he was duty bound to determine the issues raised in the grounds of appeal and had to give his reason for the decision. However, the Ld. CIT(A) has passed the impugned order without following the procedure as prescribed u/s 250(6) of the Act. Therefore, we set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A) with a direction to determine the issues raised in the appeal of the assessee and to adjudicate the same by passing a speaking order. And the assessee is also directed to be diligent during the hearing before the Ld. CIT(A) or to file the written submission as well as file the documentary evidences in support of the grounds of appeal, if advised to do so. And the Ld. CIT(A) to decide the appeal in accordance to law.



For AY. 2013-14 (ITA. No.920/Mum/2022)

3. In this case, the Ld. CIT(A) had given three (3) opportunity by fixing the date of hearing on 03.12.2021, 10.01.2022 and thereafter 08.02.2022 and finding no response from the assessee was pleased to confirm the action of the AO levying penalty. From the reading of the impugned order, we neither find any mention of the notice being served upon the assessee nor the details of the mode of service viz, registered post/speed post or intimation by email etc. So we cannot discern as to whether the notice was served upon the assessee before passing of ex-parte impugned order. Therefore, in the light of the grievance of the assessee that it didn't get proper opportunity of being heard before passing of the impugned order, we are of the opinion that reasonable opportunity ought to have been granted by the Ld. CIT(A) before disposing of the appeal of the assessee. And that Ld CIT(A) ought to have decided the appeal in accordance to the procedure stipulated under section 250(6) of the Act. Therefore, we are inclined to set aside order of Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A) with a direction to him to give adequate opportunity to the assessee to present its case before him; and the assessee is also directed to be diligent and file the supporting documents as well as the written submission if advised to do so and the Ld. CIT(A) to decide the appeal in accordance to the law.



For AY. 2010-11 (ITA. No. 922/Mum/2022)

4. The main grievance of the assessee is against the action of the Ld. CIT(A) in not condoning the delay of fourteen (14) days and dismissing the penalty appeal preferred before him.

5. Having gone through the impugned order, we note that that the Ld. CIT(A) has acknowledged the fact that on 11.05.2017 the assessee had filed an appeal before him, against the penalty order passed by AO dated 27.03.2017 u/s 271(1)(c) of the Act. And the Ld. CIT(A) has clearly noted that thus there was delay of fourteen (14) days in filing the appeal before him. However, according to the Ld. CIT(A) since there was no specific request/application of condonation of delay, he dismissed the appeal without going into the merits of the case. We do not countenance such an action Ld. CIT(A). According to us, before he could have resorted to such an action at least the Ld. CIT(A) ought to have given notice to the assessee and sought its explanation as to the cause of delay. Be that as it may, from the discussion (supra) it is not disputed that there was only delay of fourteen (14) days for filing of the appeal before Ld CIT(A). According to us, merely on technicalities, the substantive justice cannot be denied to the assessee. Before us, the assessee has explained the cause of delay in filing of appeal which was attributed to misplacing of file. Therefore, since there was reasonable cause for the delay of 14 days in filing appeal, we are inclined to condone the delay and restore the appeal back to the file of the Ld. CIT(A) with a



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direction to adjudicate the grounds of appeal raised by the assessee on its merits in accordance with law. The Ld. AR of the assessee is directed to file appropriate documents/written submissions in support of its grounds of appeal if advised to do so and be diligent when the appeal is listed for hearing before the Ld. CIT(A). With the aforesaid observation, the appeal of the assessee is allowed for statistical purpose.

6. In the result, the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 30/06/2022.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

मुंबई Mumbai; दिनांक Dated : 30/06/2022.
Vijay Pal Singh, (Sr. PS)

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai



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		Date		Initials	
	Original dictation pad is enclosed at the end of file	Yes			
1.	Draft dictated on:	30.06.2022	}		Sr. PS/PS
2.	Draft placed before author:	30.06.2022			Sr. PS/PS
3.	Draft proposed & placed before the second member:				JM/AM
4.	Draft discussed/approved by Second Member:				JM/AM
5.	Approved Draft comes to the Sr. PS/PS:				Sr. PS/PS
6.	Order pronounced on:	.06.2022			Sr. PS/PS
7.	File sent to the Bench Clerk:				
8.	Date on which file goes to the Head Clerk:				Sr. PS/PS
9.	Date on which file goes to AR				
10.	Date of dispatch of Order:				