

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1832/Mum/2021
(Assessment Year :2013-14)**

M/s. Telesteels India Pvt. Ltd, Office No. 47, Ground Floor, Satya Sai Plaza, Plot No. 05, Sector 11, New Panvel, Navi Mumai-410206	Vs.	ITO 15(3)(1), Mumbai Aayakar Bhavan, M.K.Road, Mumbai-400020
PAN/GIR No.AABCT3263G		
(Appellant)	..	(Respondent)

Assessee by	Shri Anuj Kisnadwala
Revenue by	Shri A.B.Koli
Date of Hearing	27/09/2022
Date of Pronouncement	31/10/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No. 1832/Mum/2021 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-24/ITO-15(3)(1)/IT-3/2016-17 dated 30/08/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 08/03/2016 by the Id. Income Tax Officer 15(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, we find that there is a delay of 657 days in filing of appeal by the assessee. The assessee had filed delay condonation petition in this regard. It was submitted that the order of the Id. CIT(A) was received in e-mail on 19/10/2019 in the e-mail ID of Ms. Hetal Purohit whose e-mail ID was given before the Id. AO in the assessment proceedings. But in Form No.35 filed before the Id. CIT(A), the e-mail ID given was different. Hence, the assessee pleaded that the order of the Id. CIT(A) was not served in the correct e-mail ID mentioned in Form No.35. Since, Ms.Hetal Purohit was highly irregular in attending the office of the assessee company and the fact of receipt of the said order was not informed by her to the assessee company and eventually, she also left the company in the first week of November 2019 without giving any notice to the assessee company. Thereafter, on 23/08/2021, the assessee company received the notice from the Assessing Officer for recovery of outstanding tax demand for the year under consideration. It was submitted that only at that moment, the assessee came to know that the order of the Id. CIT(A) had already been disposed of and hence, immediately the assessee filed the appeal before this Tribunal on 08/10/2021 with a delay of 657 days. We find that the reasons adduced by the assessee in the condonation petition are convincing and in this regard he also placed reliance on the decision of the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v/s Mst. Katiji & Others reported in 167 ITR 471 wherein it has been held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay. From the averments made in the condonation petition by the assessee, it can be reasonably inferred that there was absolutely no deliberate delay on the part of the assessee. Moreover, the Hon'ble

Jurisdictional High Court in the case of Baburao Deorao Wankhede vs Sewa Sahakari Sanstha and Others in Writ Petition No.1974 of 1979 dated 02/08/1988 had addressed the provisions of Section 5 of the Limitation Act and had condoned the delay of 10 years in preferring the writ petition before the Hon'ble Bombay High Court. In view of the aforesaid facts and respectfully following the aforesaid judicial precedents, we are inclined to condone the delay in filing of appeal and admit the appeal of the assessee for adjudication.

3. The next issue to be decided in this case is as to whether the Id. CIT(A) was justified in upholding the addition of Rs.14,26,90,770/- u/s.41(1) of the Act representing trade payables towards various parties in the facts and circumstances of the instant case.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee is a company engaged in the business of manufacturing and trading of steel. During the course of assessment proceedings, the Id. AO noted from the balance sheet of the assessee that assessee has shown trade payables towards various parties. The Id. AO selected three parties whose amounts aggregated to Rs.14,26,90,770/- and issued notice u/s.133(6) of the Act. The details of amounts outstanding in trade payables chosen by the Id. AO for the purpose of verification u/s.133(6) of the Act are as under:-

Name of the Creditor	Amount Payable	Remarks
i.ISPAT Industries	Rs.10,31,59,049/-	Notice u/s.133(6)of the Act were served on the party. However, the said party confirmed that there is

		no such amount reflected in their books
ii. New Core Steels Ltd	Rs.33,00,000/-	Notice u/s.133(6) of the Act was served on the party and the party did not reply till the date of completion of assessment.
iii.Lloyds Steel Industries Ltd	Rs.3,62,31,720/-	Notice u/s.133(6) of the Act were served however, the party confirmed that there is no such amount reflected in their books

3.2. Accordingly, the Id. AO proceeded to treat that the trade payables in respect of aforesaid three parties ceased to exist and proceeded to treat the same as income in accordance with provisions of Section 41(1) of the Act. The assessee submitted that ISPAT Industries Ltd was merged with JSW Steel Ltd. The assessee company submitted that it had huge receivables and payables from / to ISPAT Industries Ltd and ISPAT Profiles India Ltd and both these companies were taken over by JSW Steel Ltd. The assessee submitted that at the time of take over, the net balance (receivables – payable) alone got carried over to the books of JSW Steel Ltd. It was also submitted that there was some dispute pending with ISPAT Industries Ltd. Hence, assessee had not settled the dues payable to them. It was categorically submitted that the liability payable to ISPAT Industries Ltd., is continued to be shown in the books of the assessee company and hence, it cannot be said that the liability had ceased to exist and accordingly, provisions of Section 41(1) of the Act cannot be brought into operation.

3.3. Similarly, in respect of amount payable to M/s. Lloyds Steel Ltd., amounting to Rs.3,62,31,720/- the assessee company stated that management of M/s. Lloyds Steel Ltd., had been changed and the said company had been taken over by M/s. Uttam Steel group which is a listed company. The name of the company after takeover is M/s. Uttam Value Steels Ltd. The amount which is payable to them was under dispute and accordingly, the company continues to show the amounts payable as liability due to them.

3.4. Similarly, in respect of amounts payable to M/s. New Core Steel, the assessee filed confirmation from the said party but the Id. AO had stated that no confirmation is filed in the assessment order. Accordingly, the same was filed as additional evidence before the Id. CIT(A) which was not taken on record by the Id. CIT(A).

3.5. However, these contentions were not appreciated by the Id. CIT(A) and the Id. CIT(A) proceeded to uphold the addition made by the Id. AO. The Id. AR before us vehemently pleaded that no benefit had occurred to the assessee in respect of these trade payables and that the trade payables are still continued to be shown in the books of the assessee as a liability. Per contra, the Id. DR submitted that when the notice issued u/s.133(6) of the Act to the concerned parties, two parties categorically stated that no dues were receivable from the assessee and one party did not respond to the notice at all. Accordingly, he vehemently pleaded for upholding the order of the Id. CIT(A).

3.6. It is a fact that ISPAT Steel has been taken over by JSW Steel Ltd., and the new entity name is JSW ISPAT Steel Ltd., Similarly, New Core Steel Ltd., has been taken over by Uttam Group and new company's name is M/s. Uttam Value Steels Ltd., There is every possibility that the new entity would have adjusted the net balance i.e. payable / receivable and reflected only the net balance in its books in respect of ISPAT group and similarly, in respect of M/s New Core Steel Ltd, new entity could have either made the provision in its books or could have written off the said dues from the assessee. With regard to Lloyds Steel Industries Ltd, the amount is still continued to be shown as a liability by the books as amount payable to them. But on perusal of the orders of the lower authorities, we find that there is no factual finding recorded therein with regard to the fact as to whether provision for doubtful debts or write off of debts had been carried out in the books of accounts of M/s.JSW ISPAT Steel Ltd., or M/s.Uttam Value Steels Ltd in respect of dues receivable from the assessee. But the Id. AR has been vehemently pleading that assessee company still continues to show the amounts payable to all these parties as liability in its balance sheet and had written back the same to income in A.Y.2021-22. In these circumstances, we deem it fit and appropriate in the interest of justice and fair play, to remand this issue to the file of the Id. AO, for denovo adjudication in accordance with law and in light of the aforementioned directions. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced on 31/10/2022 by way of proper mentioning in the notice board.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 31/10/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai