

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 300/Kol/2021
Assessment Year: 2008-09

Rooprekha Vyapaar Pvt. Ltd. 11A, Braunfield Row Kolkata - 700027 PAN : AADCR8548Q	Vs	I.T.O., Ward - 1 (2), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Ravi Tulsian, FCA
Revenue by :	Shri G. Hukugha Sema, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 14/12/2022
घोषणा की तारीख /Date of Pronouncement: 15/12/2022

आदेश/ORDER

PER SHRI RAJPAL YADAV, VICE PRESIDENT:

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeal) - 17, Kolkata (hereinafter the "Id. CIT(A)") dt. 08/03/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2008-09.

2. The registry has pointed out that the appeal of the assessee is time barred by 846 days. In order to explain the delay, the assessee has filed a petition for condonation along with an affidavit of its director. The petition reads as under :-

*"Before the Hon'ble Income Tax Appellate Tribunal,
Kolkata Benches, 225/C, A.J.C. Bose Road,
Kolkata-700 020.*

*Reg: Ms. ROOPREKHA VYAPAAR PVT. LTD. (PAN: AADCR8548Q)
Assessment Year: 2008-09*

*Ref: Appeal against order of Ld. C.I.T.(Appeals)-17, Kolkata dated
08/03/2019 in Appeal No.331/CIT(A)-17/Kol/17-18 passed /s. 250 of the
I.T. Act, 1961.*

*Sub: Petition praying condonation of delay of 298 days in filing the appeal.
Hon'ble Sirs,*

In this case, order /s. 250 of the Act has been passed ex parte by the Ld. C.I.T. (Appeals) -17, Kolkata on 08/03/2019 confirming the addition of Rs.20,04,00,000/- u/s 68 of the Act made by the Ld. A.O. The delay caused in filing the appeal against the said appellate order is for the period before Covid-19 pandemic as well as outburst of Covid-19 pandemic in March, 2020, as explained below.

The fact of passing of the said appellate order was not within the knowledge of the authority of the company. It appears that the staff who received the order might have forgotten or missed to place the order before the authority. It was only on receipt of the notice dated 12.01.2021 issued by the ITO, Ward-1(1), Kolkata asking for payment of demand outstanding for the A.Y. 2008-09 arising out of the order of the Ld. C.I.T.(A)-17, Kolkata dated 08.03.2019 that the company came to know about passing of the said appellate order.

Due to Covid-19 pandemic situation, the attendance of the staff was almost nil or very nominal and the functioning of the office was irregular. After thorough search in the office and queries made to staff, the appellate order could be found out on or about last week of February, 2021. The said order got mixed together with various other loose and rough papers and escaped attention of the staff to bring the same to the notice of the authority at the appropriate time. The company thereafter consulted a senior Lawyer and according to his advice became aware that the impugned appellate order is independently an appealable order.

As the actual date of receipt of the said order was not known, therefore, the order date 08.03.2019 is taken as receipt date to count the delay in filing this appeal before this Hon'ble Tribunal. The appeal is being filed on 10/09/2021 resulting in a total delay of 857 days beyond the prescribed due date. Period of delay of 559 days starting from March, 2020 till 09/09/2021, i.e. the date of filing the impugned appeal, stands already condoned by the Hon'ble Supreme Court as stated below and the reason for delay of the rest of the 298 days is explained below with a prayer for condonation of the same.

That the aforesaid delay in filing the appeal beyond the statutory period is unintentional, bona fide and for reasonable cause. The Hon'ble Bench would appreciate that the company would not have gained in any manner whatsoever by not filing the appeal within the period of limitation and in that case the company rather shall be a sufferer for paying additional amount by way of tax/penalty. Due to some unavoidable reasons and circumstances as explained above, no step was possible to be taken for filing the appeal within the prescribed time. The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. [1987] 167 ITR 471 (SC) held that the Courts should have a pragmatic and liberal approach while considering the petition for condonation of delay. Their Lordships have also held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice should be preferred.

Furthermore, keeping in view the extraordinary situation caused by the outburst of COVID-19 pandemic, the Government of India vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 had first extended the due date of all compliances including filing of appeal under the Specified Act, i.e. I.T. Act & W.T. Act, falling between March, 2020 and December, 2020 to 31.03.2021. As the pandemic situation continues, the Hon'ble Supreme Court further on 27.04,2021 through Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020, has taken suo moto cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 pandemic and resultant difficulties faced by the litigants in filing petitions/applications/suits/appeals/ all other proceedings within the period of limitation prescribed by the Act and extended all such proceedings w.e.f. March, 2020 till further orders passed by the Supreme Court. CBDT also vide Circular No. 10/2021 dated 25.05.2021 considering the said order of the Supreme Court has extended the limitation till further orders.

In view of the above, therefore, the delay for 298 days even before the pandemic period in filing this appeal is for good and sufficient reasons and deserves condonation to meet the ends of justice. It is, therefore, humbly prayed before the Hon'ble Bench to admit the appeal for adjudication on merits of the case.

An Affidavit in this connection is filed along with this petition.

*Thanking You,
Yours faithfully,
For, M/s.Rooprekha Vyapaar Pvt. Ltd."*

3. A perusal of the affidavit would reveal that out of total 846 days, 559 days are attributable to the Covid period and is covered by the judgment of Hon'ble Supreme Court and need not be counted for determining the period of limitation. The remaining period is of 298 days. According to the assessee, the impugned order was received by the staff member of the company and he might have forgotten and missed to place the order before the Authority, who has to apply the mind for filing the appeal. Thereafter, the Covid period started. On the other hand, the Id. D/R, opposed the period for condonation of delay. On due consideration of the above facts, we are of the view that there is no deliberate attempt at the end of the assessee to commit the delay in filing the appeal because the assessee will

not gain anything by causing the delay in prosecuting the appellate proceedings. In other words, this step cannot be considered as a strategy to defend the income tax litigation. It has to be construed as a *bonafide* mistake or a human error committed in the office. Therefore, we condone the delay and proceed to decide the appeal on merits.

4. The Id. Counsel for the assessee, further contended that the appeal of the assessee has been dismissed for want of prosecution in an *ex-parte* order. He pointed out that there was change of address and, therefore, the notice could not be served upon the assessee. He further drew our attention to the assessment order and submitted that even the Assessing Officer has not carried out the exercise in the line of directions given by the Id. Commissioner in an order passed u/s 263 of Act, hence both the impugned orders deserve to be set aside and proceedings deserve to be instituted at the level of the Assessing Officer. The Id. D/R, on the other hand, contended that though there are shortcomings at the end of the Assessing Officer in passing the impugned assessment order, the Id. First Appellate Authority has considered all the material available on record while deciding the appeal.

5. We have duly considered rival contentions and gone through the record carefully. First we deem it proper to take note of the findings recorded in the assessment order which is a very brief finding and the same reads as under:-

"The assessee company filed its return of income for the assessment year 2008-09 on 22.08.2008 declaring a loss of Rs.39,088/.

Assessment order u/s 147 /143(3) dated 30.06.2010 was set aside by the Id. C.I.T, Kol-I, Kol vide its order u/s 263 of I.T. ACT dated 07.03.2013 for the A.Y. 2004 and was sent back to the A.O. giving direction for conducting fresh enquiries and necessary verifications before passing a speaking order by the A.O. in pursuance of

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his direction, the case was re-fixed for hearing by issuing questionnaire along with notice u/s, 142(1) of the I.T. Act, 1961.

The notice was sent by Speed Post to the address communicated by the assessee in its latest return. In response to said notice, the A/R, Sri Rajesh Agarwal, FCA appeared and submitted the documents and details as was asked for in the questionnaire. These were discussed with him, For further enquiry, he was asked to produce the Directors of the assessee company as well as shareholding companies during the year in concern. But, till the date of passing order, the A/R failed to do so.

Thus, enquiry to the Directors of both investee and investor companies could not be carried out by issuing Summons u/s. 131 of the I.T. Act following the direction in order u/s. 263 of the I.T. Act.

In the instant case, during the relevant year, the assessee company raised fresh share capital of Rs.200400000/- (4106000 + 196294000). In this situation, the Ld. CIT had issued the direction in his set aside order u/s. 263 of the I.T. Act to investigate the fresh capital with the compulsory appearance of the Directors of the said assessee company as well as Directors of the companies who had invested fresh share capital in the assessee company during the said asst. year. The burden of proof clearly had shifted on the assessee company to substantiate the said cash credit found in the assessee's book under the garb of fresh share capital by producing its own Directors as well as the Directors of the fresh share holding companies before the undersigned.

In the light of above facts and circumstances of the case as well as the assessee's inability to discharge its own burden of proof to substantiate its claim of introduction of fresh share capital even after given several number of opportunities, it is held that the purported fresh capital alongwith the premium aggregating to Rs. 200400000/- is nothing but the assessee's own money routed under the garb of fresh share capital into the assessee's business. Therefore, Rs. 200400000/- is hereby treated as unexplained cash credit u/s. 68 of the I.T. Act and is added back to the total income of the assessee.

Penalty proceedings u/s 271 (1)(c) is also initiated on this score for concealment of income by way of furnishing inaccurate particulars of its income."

6. A perusal of this assessment order would reveal that in the original assessment order passed u/s 143(3)/147 of the Act no addition was made. This was set aside by the Id. Commissioner in the order passed u/s 263. Thereafter, the Id. Assessing Officer has commenced the assessment proceedings in pursuance of the 263 order. However, it is not discernible as

to when he issued notice u/s 142(1) of the Act. The Id. Commissioner gave direction to the Assessing Officer to issue summons and procure the presence of the directors and others u/s 131 of the Act but the Assessing Officer has expressed his inability to carry out these directions. We fail to appreciate that compulsion. It only suggests that the Assessing Officer might have initiated the assessment very late and under the constraint of time, he has completed this assessment in a summary manner. But he made a huge addition of Rs. 20,04,00,000/-. Therefore, in the interest of justice, we deem it proper to set aside both the impugned orders and restore this issue to the file of the Assessing Officer for adjudication afresh on merits. It is pertinent to note that the observations made by us will not impair or injure the case of the revenue and will not cause any prejudice to the evidence/explanation of the assessee. The Id. Assessing Officer shall provide adequate opportunity of hearing to the assessee.

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

Order pronounced in the Court on 15th December, 2022 at Kolkata.

Sd/-

**(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Kolkata, Dated 15/12/2022

**SC S/P*

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata