

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)  
AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1181/MUM/2018  
Assessment Year: 2012-13**

MSEB Holding Co. Ltd.,  
Hongkong Bank Building  
Mahatma Gandhi Road,  
Mumbai-400 001.

**PAN No. AAECM 2934 Q  
Appellant**

**Vs.** The DCIT, Circle1(2)(1),  
Aayakar Bhavan,  
Maharshi Karve Road,  
Mumbai-400020.

**Respondent**

**ITA No. 3374/MUM/2019  
Assessment Year: 2012-13**

MSEB Holding Co. Ltd.,  
Hongkong Bank Building  
Mahatma Gandhi Road,  
Mumbai-400 001.

**PAN No. AAECM 2934 Q  
Appellant**

**Vs.** The ACIT (HQ) (Judl.) to  
CIT 14,  
Room No. 404, 4<sup>th</sup> floor,  
Aayakar Bhavan,  
Mumbai-400020.

**Respondent**

Assessee by : Mr. Ketan Ved, AR  
Revenue by : Mr. T. Shankar, CIT-DR

Date of Hearing : 28/10/2022  
Date of pronouncement : 30/11/2022



## **ORDER**

### **PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against revision order dated 27/03/2017 passed by the Ld. Commissioner of Income-tax-1, Mumbai [in short the Ld. CIT] for assessment year 2012-13, raising following grounds:

*1: 1 The Principal Commissioner of Income-tax has erred in passing the Order dated 27 March 2017 u/s. 263 of the Income-tax Act, 1961.*

*1: 2 The Principal Commissioner of Income-tax has erred in holding that the Assessment Order dated 23 March 2015 passed by the Assessing Officer was erroneous and prejudicial to the interests of revenue.*

*1: 3 The Appellant submits that the impugned Order u/s. 263 of the Principal Commissioner of Income-tax be struck down.*

2. At the outset, the Ld. counsel of the assessee submitted that this appeal was filed with a delay of 272 days. The Learned counsel of the assessee referred to the affidavit filed by Managing Director of assessee company wherein he has submitted that delay was not 'deliberate' or 'contumacious' but it was on account of a mistaken



understanding of law. In his affidavit, he has mentioned that initially on receipt of the impugned order, it was decided in discussion with the advising Chartered Accountants that there was no financial implication and so there was no requirement of filing the appeal, however later on the advice of other Chartered Accountant, the assessee decided to file the appeal against the impugned order. The Ld. counsel accordingly submitted that delay in filing the appeal might be condoned.

3. The Ld. Departmental Representative objected for condoning of the delay. He submitted that provisions of section 253(3) of the Act providing limitation in filing in the appeal to the ITAT, are plain and unambiguous. The assessee was very well aware that limitation for filing the appeal before the Tribunal would expire beyond 60 days from the date of the communication of the order of the Ld. CIT(A), but the assessee took a conscious decision not to file appeal against the impugned order because according to the assessee there was no financial implication. He submitted that there is no excuse for ignorance of the law. Further, he submitted that the assessee had



not produced any advice of the Chartered Accountants for not to file the appeal against the impugned order on the ground of no financial implication. Therefore, now the assessee cannot take the plea of mistaken understanding of law for making request for condoning of the delay in filing of the appeal. Accordingly, he submitted that appeal might be not admitted for adjudication and might be dismissed in limine.

4. We have heard rival submission on the condonation of the delay in filing the appeal by 272 days. For ready reference, it is relevant to reproduce the affidavit filed by the managing director of the assessee company, as under:

**AFFIDAVIT**

*I, Mr. Arvind Singh of Mumbai, Indian inhabitant having Permanent Account Number (PAN] AENPS1459J residing at 29-Amber, St Floor, Narayan Dabholkar Marg, Malabar Hill, Mumbai-400006 and working with 'MSEB Holding Company Limited' [MSEBHCL] having its office at 3/4 Floor, Hongkong Bank Building, Mahatma Gandhi Road, Fort, Mumbai, 400 093, India hereby solemnly affirm and declare as under:-*

1. *THAT I am the Managing Director with MSEBHCL.*



2. *THAT Messrs. P. C. Hansotia & Co. - Chartered Accountants are the consultants to MSEBHCL and who advise, appear and act on behalf of MSEBHCL connection with its matters under the Income-tax Act, 1961.*
3. *THAT for the Assessment Year 2012-2013 an Order dated 27 March 2017 was passed u/s. 263 of the Income-tax Act, 1961 by 'the Principal Commissioner of Income-tax, Circle - 1, Mumbai' ("PCIT").*
4. *THAT no appeal was filed by MSEBHCL to the Income-tax Appellate Tribunal against the Order of the PCIT challenging the validity of the Order passed by the PCIT In view of the internal discussions which led to the following conclusions:*
  - *no immediate financial implications ascended out of the Order passed u/s. 263 by the PCIT;*
  - *that an alternate remedy of filing an appeal to 'the Commissioner of Income-tax(Appeals) -2 - Mumbai' was available with MSEBHGL in case the order pursuant to the directions of the PCIT was passed hereby making additions to the income as assessed earlier.*
5. *THAT an Order dated 21 December 2017 was passed u/s. 143(3) r.w.s 263 of the Income-tax Act, 1961 thereby re-assessing the total income of MSEBA 28,40,26,976/- by making addition of Rs. 2,63,99,502/-.*
6. *THAT subsequently on further discussions with the tax consultants our attention was drawn to the law prevailing on the subject and on the decision Jurisdictional Bombay High Court in the case of Herdillia Chemicals Ltd. v. CIT reported in (1997) 90 taxman 314 wherein it was held that only such appeals which*



*have not attained finality by virtue of earlier orders of revisional or appellate authorities are maintainable.*

7. *THAT in view of the fact there has been a delay of 232 days in filing an appeal to the Income-tax Appellate Tribunal.*
8. *THAT the said delay was not deliberate or contumacious but on account of a mistaken understanding of law*

*I further declare that the above statements are true and correct and to the best of my knowledge and belief”*

5. On perusal of para 2 of above affidavit, we find that the assessee referred the name of the Chartered Accountants who advised the assessee company in the matters of the Income-tax Act, 1961. Thereafter, in Para 4 the assessee submitted that appeal against the impugned order of Ld. CIT was not filed in view of internal discussion that firstly, there was no immediate financial implication and secondly, alternate remedy of filing appeal against the consequent order of the Assessing Officer would be available.

5.1 Thus, it was a conscious decision by the assessee not to file appeal against the impugned revision order of the CIT. The assessee changed his mind only when the consequent assessment order was passed by the assessing officer on 21/12/2017, and which was not favourable to the assessee. The contention of the assessee that



delay has occurred due to mistaken understanding of the law under advise by the Chartered Accountants.

5.2 In the case of **Mariambai and Anr Vs Hanifbai and Anr, Hon'ble Madhyapredesh High Court on 26<sup>th</sup> March 1963 (reported in AIR 1967 MP 107)** rejected the plea of mistaken advice of Ld. Counsel as sufficient cause for condoning delay in filing appeal. The facts of the matter are that a senior counsel, KB. Hifazat Ali, advised the defendants to present their appeal in the Court of the District Judge, Mandleshwar and they did so. On his part, the counsel has filed an affidavit to say that "at that time I was under the impression that the appeal would lie to the District Court" and, therefore. "I advised and prepared the memo of first appeal and asked defendent to go and present the same to the District Judge. Nimar, at Mandleshwar"

5.3 There was a difference of opinion between two Hon'ble Judges, Justice Newaskar. J. and Tare, J. on the question whether, in the circumstances of this case, there is sufficient cause within the



meaning of [Section 5](#) of the Limitation Act for extension of the time prescribed for filing this appeal.

5.4 Hon'ble Justice Newaskar J relying upon **Phoolabhai v. Ashabhai, First Appeal No. 42 of 1954. dated 3-12-1957 (MP)**. which followed the view taken in *Krishnarao v. Trimbak*, ILR (1938) Nag 409 (AIR 1938 Nag 150); [Hemraj Dhannalal Firm v. Ambaram](#). 1961 MPLJ 343: (AIR 1961 MadhPra 336' and the observations of the Privy Council in [Rajendra Bahadur v. Rajeswar Bali](#), AIR 1937 PC 276. took the view that each and every mistake committed by a counsel is not a just ground for extending limitation, that, to be a ground available for the purpose, the advice given by the Counsel should be sustainable as one which could be entertained by a competent legal practitioner exercising reasonable care and that, where the provision of law governing the point is in itself, or for any other reason, incapable of bearing any other interpretation, the mistake of a counsel is not sufficient cause within the meaning of [Section 5](#) of the Limitation Act.



5.5 Hon'ble Judge Tare. J. held that there was sufficient cause in delayed filing of appeal. His conclusion is as under:

*"Therefore, I am of opinion that if a legal adviser in the confused state of law prevailing in the different regions of a State commits a mistake on his impression of the regional law, his act might amount to some sort of negligence, yet it would not amount to gross negligence so as to deserve a censure by refusal to extend time."*

6. After hearing the arguments of both side on the difference of opinion between two Judges, the Hon'ble High Court [through Hon'ble Justice Pandey] held the broad principles for existence of sufficient cause as under:

*"4. Having heard the counsel at some length, I am inclined to agree with the view taken by Newaskar, J. In [Ramlal v. Rewa Coalfields Ltd.](#), AIR 1962 SC 361, the Supreme Court quoted with approval the following statement of the Madras High Court in *Krishna v. Chathappan*, (1896) ILR 13 Mad 269 (FB):*

*"[Section 6](#) gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words sufficient cause receiving a liberal construction so as to advance substantial*



*justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."*

*The statement of law, which has been accepted by the Supreme Court, implies that though 'sufficient cause' has to be liberally construed, there will be no sufficient cause where negligence or inaction or want of bona fides is imputable to the appellant. In AIR 1937 PC 276. the Privy Council observed:*

*"Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice."*

*In view of these observations, the appellants cannot rely merely upon the erroneous advice given to them by their counsel. They have to show something more to be able to establish that there was sufficient cause. In this connection I may point out that the absence of a detracting consideration like gross negligence or want of good faith on the part of the counsel is not enough, though if it be present, it would destroy the claim that there was sufficient cause. In AIR 1937 PC 276 (supra), the Privy Council indicated what more is required in the context of a counsel giving wrong advice. This is what the Board stated:*

*"The Chief Court's refusal to admit the appeal was based on the view that counsel did not exercise due care and*



*attention and acted with gross negligence in the matter'. If this opinion be correct, their Lordships will assume that in the present case it would suffice to justify the dismissal of the appeal. It clearly involves however that the view taken was not such as could have been entertained by a competent practitioner exercising reasonable care"*

*In view of these observations, the appellants, to be able to establish that there was sufficient cause grounded on wrong advice given by their counsel, have to show:*

*(i) that it was given by a competent practitioner*

*(ii) that the practitioner, in giving the advice, exercised reasonable care; and*

*(iii) that the advice given by him is founded on a view which could, in the circumstances of the case, be taken by any competent legal practitioner exercising reasonable care. ”*

6.1 After considering the facts of the case in the light of the above principle, the Hon'ble High Court (supra) even rejected the plea for sympathy observing as under:

*9. The learned counsel for the appellants also urged that this was a bard case and deserved the sympathy of the Court As pointed out by this Court in Krishna Rao's case, ILR (1938) Nag 409: (AIR 1938 Nag 156) (supra), the period of preferring*



*an appeal, cannot be extended simply because the appellant's case is hard and calls for sympathy nor will the Courts extend the period of limitation out of benevolence to the party seeking relief.*

*10. In the view I have taken, I am of opinion that, in the circumstances disclosed in this case, there is no sufficient cause within the meaning of [Section 5](#) of the Limitation Act to justify extension of the period of limitation prescribed for filing the appeal.*

6.2 When we examine the facts of the instant case in the light of the principle laid down above, we find that though the assessee has referred to name of the Chartered Accountant and submitted that delay was due to mistaken understanding of the law however no copy of the advice given by the Chartered Accountant has been filed before us. Even If it is presumed that such an advice was given by the Chartered Accountant, it was not with the reasonable care. By way of challenging the impugned order within the limitation period, there was a possibility of setting aside that order by the Tribunal, which the assessee has simply forgone. Further, had the assessee chosen filing of appeal against the impugned order, the option of pursuing the appeal against the assessment order consequent to



the order under 263 of the Act by the assessee would have been still been available. The defense of mistake of the law is only available if the provision is capable of being interpreted into different manners, but in this case the provisions of the act are plain and simple and it was for the assessee to choose the option of the filing appeal against the order under section 263 of the Act or only against the assessment order consequent to the order under section 263 of the Act. The assessee has taken a conscious call for not to file the appeal against impugned and now can't take a plea that it was due to negligence on the part of the Chartered Accountant or due to mistaken understanding of law.

6.3 Here in the instant case the assessee exercised the option of choosing of the alternative forum i.e. the Assessing Officer and this was a conscious decision taken after deliberations on the issue and not bonafide mistake. In view of above discussion, we are of the opinion that the assessee has failed to explain the existence of 'sufficient cause' for condoning delay in filing the appeal.



6.4 The appeal filed by the assessee is not admitted and rejected in limine without giving any finding on the grounds raised by the assessee.

6.5 The appeal of the assessee in ITA No. 1181/Mum/2018 is accordingly rejected as unadmitted.

7. Now, we take up the appeal of the assessee in ITA No. 3374/Mum/2019 for assessment year 2012-13, arising out of assessment order passed under section 143(3) of the Act on 23/03/2015. The grounds raised in the appeal are reproduced as under:

*“1: 1 The Commissioner of Income-tax (Appeals) has erred in confirming the action of the Assessing Officer in disallowing the expenditure relating to 'Employees' remuneration and benefits' of Rs. 11,72,241/- and 'Other expenses' of Rs. 61,65,946/- incurred by the Appellant.*

*1: 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the expenditure relating to 'Employees' remuneration and benefits' of Rs. 11,72,241/- and 'Other expenses' of Rs.*



*61,65,946/- incurred by it were wholly and exclusively for the purpose of its business and are allowable as such and the stand taken by the Assessing Officer in this regard is erroneous.*

*1: 3 The Appellant submits that the Assessing Officer be directed to grant deduction for expenditure incurred by the Appellant and to re-compute its total income and tax thereon accordingly.”*

8. Briefly stated facts of the case as culled out from the order of the lower authorities and the submissions of the assessee made before us, are that the assessee filed return of income on 29/09/2012 declaring loss of ₹2,01,96,98,634/-. The case was selected for the scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short ‘the Act’) were issued and complied with. The assessee company is incorporated on 31/05/2005 and is wholly-owned by government of Maharashtra. The company hold shares of three subsidiary companies namely Maharashtra State Power Generation Company Limited; Maharashtra State Electricity Transmission Co Ltd and Maharashtra State Electricity Distribution Company Limited. The assets and liabilities of the erstwhile MSEB have been distributed



among three demerged entities and the assessee is engaged in the business of the holding the investments in three operating companies and letting out properties owned by it to the subsidiaries.

8.1 For the year under consideration, the assessee filed return of income on 29/09/2012 declaring total loss of ₹2,01,96,98,630/- which consisted of income under the head “income from house property” at ₹25,76,37,002/- and income under the head “profit and gains of business and profession” at loss of ₹2,27,73,35,636/-. During the year under consideration, the assessee debited expenses of ₹2,33,67,98,824/- to the profit and loss account, on the count of employee remuneration and benefit, administration and general expenses, finance cost, depreciation and net prior period expenses, but in the return of income only expenses to the extent of ₹2,30,15,17,081/- were claimed. The return of income filed by the assessee was selected for the scrutiny and in the assessment order dated 23/03/2015 passed under section 143(3) of the Act, the Assessing Officer disallowed, the expenses to the extent of



₹2,32,04,98,824/- on the ground that no business activity was carried out by the assessee during the year under consideration. On further appeal, the Ld. CIT(A) disallowed expenses to the extent of ₹2,30,15,22,345/-. Out of the disallowance confirmed by the CIT(A), the assessee has challenged disallowance to the extent of ₹73,38,187/-in the grounds raised. A chart of expenses debited in profit and loss account, claimed in the return of income, disallowed by the Assessing Officer, disallowed by the Ld. CIT(A) and challenged by the assessee in the grounds raised before the ITAT is reproduced as under:

Particulars	Expenditure debited to the Profit & Loss Account	Claimed in the return of income	Disallowance by the Assessing Officer	Disallowed by the CIT(A)	Grounds before the ITAT
Employees' remuneration benefits (Salary) &	11,72,241	11,72,241	11,72,241	11,72,241	11,72,241
Administration and General expenses	2,12,11,961	49,11,961	49,11,961	49,11,961	49,11,961
Finance Cost (Interest and Finance charges)	2,29,41,84,158	2,29,41,84,158	2,29,41,84,158	2,29,41,84,158	0 <sup>2</sup>
Depreciation as per books of accounts	1,89,76,479	0	1,89,76,479	0	0
Net prior-period expenses	12,53,985	12,48,721 <sup>3</sup>	12,53,985	12,53,985	12,53,985
<b>Total</b>	<b>2,33,67,98,824</b>	<b>2,30,15,17,081</b>	<b>2,32,04,98,824</b>	<b>2,30,15,22,345</b>	<b>73,38,187</b>



8.2 Regarding the issue of disallowance of Administration and General expenses to the extent of ₹49,11,961/-, the Ld. counsel of the assessee submitted that this issue is covered in favour of the assessee in its own case for assessment year 2011-12 in ITA No. 3999 and 2492/Mum/2016. The Ld. DR on the other hand relied on the order of the lower authorities.

9. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record.

9.1 The ground no. 1.1 relates to disallowance of ₹11,72,241/- in relation to employee remuneration and benefits. It was claimed before us that said expenses are the routine expenses of salaries paid to its employees, which one has to perforce incur to keep the company going. It was further submitted that issue relating to disallowance of employee remuneration and benefit incurred to keep the assessee company running was being allowed by the Ld. CIT(A) in earlier years and was not disputed by the Income-tax department before the ITAT in any of the earlier years. The Ld. counsel further submitted that issue of disallowance of day-to-day



expenditure incurred to keep the assessee company running has been covered in favour of the assessee in its own case for assessment year 2011-12 in ITA No. 3999 and 3492/Mum/2016. The relevant finding of the coordinate bench of the Tribunal (supra) is reproduced as under:

*8. We have heard the rival submissions, perused the orders of the authorities below. The assessee before the Ld.CIT(A) submitted that allowance contemplated us. 37(1) was not necessarily an allowance for amounts expended to increase profits only so long as it was for the purpose of the business. It was judicially accepted that it was also not necessary that profits should be earned by each and every expenditure. Reliance was placed on the following decisions: -*

- i. CIT v. Rajendra Prasad Moody [115 ITR 419 (SC.)]*
- ii. R.B. Bansilal Abirchand Spg. & Wug. Mills v. CIT (81 ITR 34 (Bom.) (FB))*
- iii. F. E. Dinshaw Ltd. v. CIT (36 ITR 114 (Bom.))*
- iv. Delhi Cloth & General Mills Co. Ltd. v. CIT (85 ITR (Delhi))*
- v. CIT v. Dalmia Cement Ltd. (254 ITR 377)*
- vi. CIT v. Navsari Cotton and Silk Mills Ltd. (135 ITR 546)*
- vii. Ravi Marketing (P) Ltd. v. CIT 280 ITR 519)*
- viii. CIT v. Malayalam Plantations Ltd. (53 ITR 140)*

*9. Assessee further submitted that in view of the foregoing and considering the facts and circumstances of the assessee's case and the law on the subject, the expenditure incurred by the assessee during the year under consideration was allowable while computing its total income for the year as it was not necessary that profits should be earned by each and every expenditure. Considering the submissions of the assessee the Ld.CIT(A) allowed the claim of the*



*assessee and we see no infirmity in the decision of the Ld.CIT(A) in allowing the claim of the assessee. Hence, this ground is dismissed.*

9.2 Respectfully following the finding of the Tribunal (supra), the expenses claimed on employee remuneration and benefit being essential for existence of the assessee company and running activity of holding investment in subsidiaries, the finding of the Ld. CIT(A) on the issue in dispute is set aside and the disallowance made by the Assessing Officer of the said expenses is deleted. The ground No. 1.1 of the appeal is accordingly allowed.

10. In ground No. 1.2 and 1.3 of the appeal the assessee has challenged disallowance of administrative and general expenses of ₹49,11,961/- and prior period expenses of ₹12,53,985/- totalling to ₹61,65,946/-. Under the head administrative and general expenses, in the profit and loss account amount of ₹2,12,11,961/- has been debited. The assessee has reported that this amount included ₹1,63,00,000/-for property tax, under 'Rent, rates and taxes' and therefore same was considered separately against the income from house property. Therefore, balance amount of ₹49,11,961/- was only claimed against administrative and general expenses which



was disallowed by the Assessing Officer and upheld by the Ld. CIT(A). The ITAT (supra) has allowed claim of the assessee of expenses despite the objection of the revenue that no business activity was carried out. The relevant para has already been reproduced while adjudicating ground no. 1.1 of the appeal. since the expenses has been allowed by the ITAT (supra) for maintaining infrastructure of the company, respectfully following the same the expenses on General and administrative claimed in the year under consideration are allowed being incurred for the purpose of the maintaining investment holding activity of the assessee company.

10.1 In regard to prior period Expenses of ₹12,53,985/-, the Ld. counsel submitted that issue in dispute is covered in favour of the assessee in its own case for assessment year 2007-08 and 2008-09 in ITA No. 2406/Mum/2011 and 7831/Mum/2011. The relevant finding of the Tribunal (supra) is reproduced as under:

*“43. We have heard the rival contentions and perused the material available on record. On examination of the audited Profit & Loss account of the assessee for the impugned assessment year and more particularly Schedule-O to the Profit & Loss account, we have noticed that while the assessee had offered prior period income of Rs. 91,28,99,951, it has also*



*claimed prior period expenditure of Rs.11,89,244. Therefore, the claim of the assessee was very much before the Assessing Officer. When the Assessing Officer accepts the prior period income offered by the assessee with reference to the audited Profit & Loss account, logically, he should also have allowed assessee's claim of prior period expenditure. In view of the aforesaid, we do not find any infirmity in the order of the learned Commissioner (Appeals) on this issue. Ground no.1 is dismissed.”*

10.2 In the year under consideration also prior period income offered has been accepted and net prior period Expenses have been disallowed, therefore following the finding of the Tribunal (supra), the disallowance made by the Assessing Officer is deleted.

11. In view of our finding, the ground No. 1.2 and 1.3 of the appeal are allowed.

12. The ground No. 2 being general in nature, we are not required to adjudicate upon and accordingly dismissed as infructuous.

13. In the result, the appeal of the assessee in ITA No. 3374/M/2019 allowed partly, whereas appeal in ITA No. 1181/M/2018 is rejected as unadmitted.

**Order pronounced under Rule 34(4) of the ITAT Rules, 1963 on 30/11/2022.**



**Sd/-**  
**(ABY T VARKEY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 30/11/2022  
Dragon Legal/Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Sr. Private Secretary)  
**ITAT, Mumbai**