

आयकर अपीलीय अधिकरण  
मुंबई पीठ “ एच”, मुंबई पीठ  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री गगन गोयल, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “ H ”, MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL , ACCOUNTANT MEMBER  
आअसं. 2805 से 2810 /मुं/ 2022 (नि.व. 2009-10 से 2011-12)  
ITA NO. 2805 TO 2810/MUM/2022(A.Y.2009-10 TO 2011-12)

M/s. Hinglaj Metals & Alloys Pvt. Ltd.,  
2 Sheetal CHSL, Grnd Floor,  
Saptrishi Sankul Ovripada,  
Dahisar East, Mumbai – 400 068.  
PAN: AAACH-9744-H

..... अपीलार्थी /Appellant

बनाम Vs.

CIT(A), NFAC,  
Delhi.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharmil A. Jhaveri

प्रतिवादी द्वारा/Respondent by : Shri Tejinder Pal Singh Anand

सुनवाई की तिथि/ Date of hearing : 05/01/2023

घोषणा की तिथि/ Date of pronouncement : 28/02/2023

**आदेश/ ORDER**

**PER BENCH:**

These six appeals by the assessee are directed against the orders of Commissioner of Income Tax(Appeals) , National Faceless Appeal Centre, Delhi [in short ‘the CIT(A)’ ] for Assessment Years 2009-10, 2010-11 and 2011-12 confirming levy of penalty u/s. 271A and under section 271B of the Income Tax Act, 1961 [in short ‘the Act’] in the respective assessment years.

2. Since, these appeals arise from identical set of facts all these appeals are taken up together for adjudication and are decided by this common order.

3. These appeals are time barred by 34 days (Appeal in ITA No.2808/Mum/2022 for Assessment Year 2009-10 is time barred by 269 days). The delay in filing of appeal has been attributed to the failing and fragile health of the Director of the assessee company. In so far as the delay in ITA NO.2808/Mum/2022, the Id. Authorized Representative for the assessee submits that the impugned order was passed on 09/12/2021 i.e. during the COVID-19 Pandemic period. The limitation for filing of the appeal during COVID-19 period was extended by the Hon'ble Apex Court taking suo-motu cognizance of the hardship caused by the COVID-19 Pandemic. The Id. Authorized Representative for the assessee further submits that the assessee is a Sr.Citizen and his business has closed down and is not having assistance from any of the supporting staff.

3.1 We have heard the submissions of Id. Authorized Representative for the assessee on condonation of delay. The assessee has filed an affidavit citing reasons for delay in filing of appeals. After having examined the contents of the affidavit and submissions of the Id. Authorized Representative for the assessee, we are satisfied that delay in filing of appeals is not intentional but has caused due to reasons stated in the affidavit. The reasons causing delay prime-facie appears to be bonafide. The Hon'ble Apex Court in various decisions has held that acceptance of explanation furnished for seeking condonation of delay should be the rule and denial an exception. Taking into consideration entire facts, the delay in filing of appeals is condoned and appeals are admitted to be heard and disposed of on merits.

4. Shri Dharmil A. Jhaveri appearing on behalf of the assessee submits that the assessee is a company engaged in trading of ferrous and non-ferrous metals. The assessment for Assessment Years 2009-10, 2010-11 and 2011-12 in the case of assessee was reopened for the reason that the assessee allegedly obtained bogus purchase bills from hawala entry providers. In assessment proceedings the assessee was directed to furnish books of account. The Authorized Representative for the assessee appeared and furnished copy of the annual return, names and address of the sales and purchase parties. However, due to some communication gap between the assessee and its Authorized Representative, certain documents remain to be furnished. The Directors of the assessee company are Sr. Citizens and were able to look after the affairs of the company. Gradually, the sales of the assessee company declined and now the assessee is not carrying out any business, The assessee is a company registered under the Companies Act and therefore, was required to maintain books of account and duly audited. The books of the assessee for assessment year 2009-10, 2010-11 & 2011-12 were duly maintained and were audited, however, the same could not be furnished before the Assessing Officer. Therefore, the Assessing Officer levied penalty u/s. 271A and u/s. 271B of the Act for all the three impugned assessment years. The Id. Authorized Representative for the assessee furnished copy of the Audit Report for Assessment Years 2009-10, 2010-11 and 2011-12 and submitted that non-furnishing of audited accounts and the audit reports before the Assessing Officer was not intentional. The Id. Authorized Representative for the assessee prayed for deleting the penalties levied u/s. 271A and u/s. 271B of the Act for the Assessment Years 2009-10, 2010-11 and 2011-12.

5. Per contra, Shri Tejinder Pal Singh Anand representing the Department vehemently defended the impugned order and prayed for dismissing the appeals of assessee.

6. We have heard the submissions made by rival sides and have examined orders of authorities below. The penalty proceedings u/s. 271A and u/s. 271B of the Act were initiated against the assessee in the impugned assessment years for non-maintenance of books of account and failure to get accounts audited. The Id. Authorized Representative for the assessee has placed on record audited reports for Assessment Years 2009-10, 2010-11 and 2011-12, respectively and has explained the reasons for non-furnishing of audited accounts and the audit report before the Assessing Officer. After having considered the reasons, we are satisfied with reasonableness of the cause for non-furnishing of accounts and audit report before the Assessing Officer. In the entirety of facts we are of considered view that it is a fit case for deleting penalties levied u/s. 271A and u/s. 271B of the Act in the impugned Assessment Years i.e. 2009-10, 2010-11 and 2011-12. We hold and direct accordingly. The impugned orders are set-aside and the appeals are allowed.

7. In the result, appeals of the assessee in ITA Nos 2805 to 2810/MUM/2022 for assessment years 2009-10 to 2011-12 are allowed.

Order pronounced in the open court on Tuesday the 28<sup>th</sup> day of February, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28/02/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar),  
ITAT, Mumbai