

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री गिरीश अग्रवाल, लेखा सदस्य  
के समक्ष

Before  
**SRI SANJAY GARG, JUDICIAL MEMBER**

&  
**SRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**I.T.A. No.: 447/KOL/2022  
Assessment Year: 2015-2016**

**Concrete Consultancy Services Pvt. Ltd.....Appellant  
[PAN: AABCC 5014 G]**

**Vs.**

**ITO, Ward-6(1), Kolkata.....Respondent**

**Appearances by:**

*Sh. Anil Kochar, Adv., appeared on behalf of the Assessee.*

*Sh. P.P Barman, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.*

Date of concluding the hearing : April 20<sup>th</sup>, 2023

Date of pronouncing the order : May 1<sup>st</sup>, 2023

**ORDER**

**Per Girish Agrawal, Accountant Member:**

This appeal by the assessee is directed against the order no. 10314/CIT(A)-2/17-18 dated 04.04.2019 passed by the Ld. CIT(A)-2, Kolkata for AY 2015-2016 against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ITO, Ward-6(1), Kolkata, dated 09.11.2017.

2. Grounds of appeal taken by the assessee reads as under:

*"1. For that the Ld. CIT (A) erred in passing an ex-parte order on the alleged grounds.*

2. For that Ld. CIT (A) ought to have taken note of and duly considered relevant facts and ought not to have dismissed the appeal of the appellant because of non-appearance of the appellant.

3. For that the Ld. CIT (A) has elaborately discussed the reasons for dismissing the appeal of the appellant due to non-compliance by the appellant to the notices of hearing but then he ought to have disposed off the contentions raised by the appellant in the grounds of appeal by referring to details and explanations whatsoever were submitted in the course of assessment proceedings.

4. For that the Ld. CIT (A) ought to have considered the factual aspect of the case that the A.O. had not verified relevant evidences adduced by the appellant in support of loans received and the evidences thereof remaining unrebutted by the A.O.

5. For that the appellant had received appellate order dated 04.04.2019 but appeal could not be submitted before the Hon'ble Income Tax Appellate Tribunal in time and it is prayed that delay may kindly be condoned and the appeal may kindly be heard.

6. For that the appellant craves leave to submit all relevant facts and evidences relating to the issues involved in the appeal and prays that the same may kindly be considered.

7. For that at any rate the Ld. CIT (A) ought not to have confirmed the determination of the assessable income of the appellant at Rs.3,94,96,600/-

8. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.”

3. At the outset, ld. Counsel for the assessee Sh. Anil Kochar, Advocate, was confronted to explain the delay of 1158 days in filing the present appeal. The impugned order of ld. CIT(A) is dated 04.04.2019 which is claimed to have been received by the assessee on the same date. The appeal has been filed on 05.08.2022 which ought to have been filed on or before 03.06.2019. In respect of this, ld. Counsel for the assessee referred to the petition for condonation of delay filed in the form of an affidavit. The relevant extracts from the said petition, seeking condonation of delay are reproduced as under:

“1. That I am Director of Concrete Consultancy Services Pvt. Ltd. having its office at Second Floor, 51, Ezra Street, Kolkata-700001.

2. That while going through the old records relating to Income Tax matters I came across an order passed by the Ld. CIT (A) - 2, on 04.04.2019 for the AY 2015-16.

3. That it became necessary to check and refer to the relevant Income Tax records and since our Accountant Shri Pravin Agarwal who was looking after our accounts and Income Tax matters till the year 2020 had suddenly left the services under us without giving note of any pendency matters relating to accounts and Income Tax, etc. after great attempts it was possible to locate order of assessment and relevant papers.

4. That I have now prepared the appeal through the Tax Counsel and since there is delay in the matter of filing of the appeal, this is a petition for condonation of delay in submission of the appeal.

5. That our Accountant Shri Pravin Agarwal who was looking after our accounts and Income Tax matters was, as we understand now, not satisfied with the remuneration which we were paying to him. We understand that he was looking for a job on some transfer, suddenly he started remaining absent and we thereafter contacted him at his residence. He replied that he has left the job under us. Upon this he was informed to come to office one day and prepare a statement about the pendency matters relating to accounts and Income Tax.

6. That despite passage of time he did not turn up and because it was Covid-19 period, we also could not properly pursue the matter.

7. That it was only in the month of May this year that we took steps to inspect the relevant books of accounts and pending matters for assessment year in appeal that we came across appeal order dated 04.04.2019.

8. That we immediately consulted a tax counsel who advised us for filing appeal before the Hon'ble Income Tax Appellate Tribunal and since time prescribed was already passed a condonation petition is being made

9. That there has been no wilful and/or intentional default in the matter. The delay occurred due to absence of the Accountant as stated above and also partly due to non-performance of the function of the company in the time due to Covid-19.”

4. From the perusal of the above petition, the explanations given by the assessee are general and casual without any corroboration though it is a company form of set up having all the where whittle to take care of its business operations and the relevant regulatory compliance requirements. It is not a case of an individual but a company where proper organizational structure exists.

4.1. Further, on perusal of the records, it is noted that order by Id. CIT(A) observes that none appeared to represent the assessee nor any adjournments

were sought for the appellate proceedings and therefore, he, by considering the grounds of appeal, statement of facts, the assessment order and the material available on record, disposed off the appeal. The relevant extracts in respect of opportunities given to the assessee by ld. CIT(A) are reproduced as under:

<i>Date of Notice</i>	<i>Date of Hearing</i>	<i>Remarks</i>
20.02.2018	06.04.2018	• The case was fixed for hearing: today, but none appeared nor was an adjournment petition filed on behalf of the assessee.
18.09.2018	12.10.2018	• The case was fixed for hearing today, but none appeared nor was an adjournment petition filed on behalf of the assessee.
31.10.20.18	05.12.2018	• The notice was not served and returned back with postal remarks "1/S".
21.01.2019	04.02.2019	• The notice was not served and returned back with postal remarks "Insufficient address!"
06.02.2019	27.03.2019	• The notice was not served and returned back with postal remarks "Insufficient address."

*It is also pertinent to mentioned that all the notices were also sent through email automatically by the ITBA system on the registered email id of the assessee. As per ITBA case history / nothings of the appellate, no reply has been Received in system."*

5. Ld. CIT(A), thus, passed the order by holding that ld. AO has discussed the issue with detail with all the facts and relevant evidences placed on record. While passing the order, he agreed with the view taken by ld. AO and in absence of any further cogent material evidences placed on record by the assessee in the appellate proceedings, he did not find any infirmity with the order of ld. AO and thus, dismissed the appeal of the assessee.

6. On going through the impugned assessment order, it is observed that the case of the assessee was selected for limited scrutiny on the grounds of i) Large increase of unsecured loans during the year and ii) Low income in comparison to high loans/advances/investment in shares.

7. Ld. AO issued notices u/s 143(2) and 142(1) of the Act which were served on the assessee but no compliance was made in respect thereof.

However, assessee made a submission vide letter dated 08.08.2017, by enclosing copy of return and financial statement for the year. Ld. AO issued further notices for which no compliances were made except for one submission dated 11.10.2017 by giving few details including details of bank account, bank reconciliation, bank statement and memorandum and article by association. Subsequently, ld. AO issued show cause notice requiring the assessee to submit details of lenders to verify their existence and creditworthiness as well as genuineness of the transaction with them for which no compliance was made by the assessee. Accordingly, ld. AO proceeded to complete the assessment by making an addition of Rs. 3,94,96,612/- in respect of unsecured loans, obtained by the assessee, by treating the same as unexplained cash credit u/s 68 of the Act.

7.1. Before, us, we note that registry had been issuing notices for fixing the dates of hearing and the same have been returned unserved with the notation by the Postal Department as “Addressee could not be located (ACNL)”. We also observe that though the notices sent by the registry are being returned unserved, however, ld. Counsel for the assessee had been appearing and seeking adjournments. On the date of hearing on 09.02.2023, an application for adjournment was moved by ld. Counsel for the assessee on the premise that a paperbook is to be submitted with all relevant papers and documents which are being collected. Considering this prayer, an adjournment was granted fixing the next date of hearing on 22.003.2023 on which the Bench did not function. The next date was fixed for 20.04.2023 on which ld. Counsel for the assessee appeared but no such paperbook or any other relevant papers or documents were placed on record.

8. The conduct of the assessee right from the assessment proceedings to the present one appears to be that of casualness. We are guided by the well-known dictum of “*vigilantibus non dormientibus jura subveniunt*” which embodies the principle that “*The law assists those who are vigilant and not those who sleep over their rights.*” We are also aware of the proposition that a litigant has not only to file an appeal but has to prosecute the same diligently. Accordingly, in the present case before us, the view taken by ld. CIT(A) after

considering the facts and relevant evidences available on record does not need any interference on our part. Thus, the appeal of the assessee is dismissed in view of inadequate explanation for the delay of 1158 days in filing the present appeal and its conduct in the proceedings.

9. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the Court on 1<sup>st</sup> May, 2023 at Kolkata.**

Sd/-  
[Sanjay Garg]  
Judicial Member

Sd/-  
[Girish Agrawal]  
Accountant Member

Dated: 01.05.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Concrete Consultancy Services Pvt. Ltd., 2<sup>nd</sup> Floor, 51, Ezra Street, Kolkata-700 001.**
2. **ITO, Ward-6(1), Kolkata.**
3. CIT(A)-2, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata