

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.3819/Del/2017
Assessment Year: 2008-09

Integrated Caps Pvt. Ltd.,
42, Anand Lok,
New Delhi – 110 049.

Vs DCIT,
Circle-11(1),
New Delhi.

PAN: AAACI0505P

(Applicant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Anuj Garg, Sr. DR
Date of Hearing	:	01.05.2023
Date of Pronouncement	:	08.05.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.3819/Del/2017 for AY 2008-09 arises out of the order of the Commissioner of Income Tax (Appeals)-22, New Delhi, [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No.108/16-17/CIT(A)-22 dated 19.04.2017 against the order of assessment passed u/s 144 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 20.12.2010 by the ld. Assessing Officer, Circle 11(1), New Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds :-

"1.a) That the Ld. CIT(A) has failed to appreciate the facts and circumstances of case and erred in to not granting the condonation of delay of 4 years and 7 months approximately in respect of filing of appeal before Ld. CIT(A). Despite the facts that the

appellant has got certified true copy of assessment order dated 20.12.2010 on 08/07/2015 and filed appeal before CIT(A) on 16.07.2015 i.e. within 30 days of the service of assessment order.

1(b) The Ld. CIT (A) has erred in to not allowing condonation of delay of 4 years and 7 months approximately without any default on the appellant company. The assessing officer has wrongly mentioned and sent the order u/s 144/143(3) dated 20.12.2010 at the address A-12, Sector-57, Phase-III, Noida. The said address was not in operation as factory was closed, whereas the registered office of the appellant company duly specified in assessment records is at 42, Anand Lok, New Delhi-110049.

2(a) That the Ld. CIT(A) has erred in confirming the order passed u/s 144/143(3) of the Income Tax Act, 1961 which is erroneous, bad in law, wrong on facts and against the principle of natural justice.

2(b) That the CIT(A) is not justified in confirming the order passed u/s 144/143(3) dated 20.12.2010 as no notices dated 06.08.2009, show cause notice dated 06.10.2010 u/s 271(b) and show cause notice dated 22.11.2010 framing order u/s 144 of the Act was served upon or received by the appellant and as such the appellant was prevented by reasonable and sufficient cause to comply with the notices and proceedings.

3(a) The Ld. CIT(A) has erred in law as well on the facts to upheld the disallowance of Rs. 6,10,76,443/- being 20% of total expenses of Rs. 30,53,82,517/- arbitrarily disallowed by the Assessing Officer on Ad-hoc basis, based on mere conjectures and surmises.

3(b) The Ld. CIT(A) erred in confirming arbitrary adhoc adhoc disallowance of Rs.6,10,76,443/- without appreciating the fact that the books of account with supporting bills and vouchers were duly audited under Companies Act 1956 and again audited u/s 44AB of Income Tax Act and duly produced before the Ld. A.O dully verified by him in the remand proceedings as per the remand report.

4. That the Ld. CIT(A) has erred in law and on the facts to upheld the disallowance of Rs. 2,24,409/- made by assessing officer on account of credit card bill payment reported in AIR information treating the same as unexplained expenditure inspite of the fact the expenses were verified in the remand proceedings as per remand report.

5. The Ld, CIT(A) has grossly ignored the brought forward business Losses /unabsorbed depreciation of Rs. 19,78,74,100/- which was not set off against the income assessed at Rs. 1,31,89,799/- of the year under appeal.

6. The Ld. CIT(A) erred in not directing A.O to allow credit for TDS of Rs.9,39,970/-.

The appellant craves leave to add, alter, amend, modify or forego any of the grounds of appeal before or at the time of hearing.”

3. None appeared on behalf of the assessee from the date of filing of appeal on 12.06.2017. On perusal of the order sheet, we find that the assessee had been given 15 opportunities to represent itself before this tribunal, which were not utilized by the assessee. This reflects the cavalier attitude of the assessee and not taking the judicial process seriously. Hence we deem it fit to dispose of this appeal on hearing the Id. DR and based on materials available on record.

4. From the perusal of the order of the Id. CIT(A), we find that the Id. CIT(A) had dismissed the appeal of the assessee by not admitting it, due to delay in filing of appeal by the assessee. We find that the Id. CIT(A) had noticed in his order that the assessee had even denied the service of assessment order in January 2011. As there was a delay in filing of appeal by 4 years and 7 months before the Id. CIT(A), the assessee was asked to file condonation petition, which was filed on 2.2.2017. The Id. CIT(A) had noted that the assessee also filed a paper book comprising of return of income, audited accounts, tax audit report and ledger account of expenses. The matter was remanded to the Id. AO and remand report dated 2.11.2016 was sent to the assessee. Counter comments for the same was filed by the assessee on 9.1.2017. Second remand report from the Id. AO was received on 23.2.2017 in which the Id. AO had stated that the computerized accounts were produced during the remand proceedings and since the same were filed after such a long gap of several years, the same was not accepted as genuine by the Id. AO. The Id. CIT(A) noted that in response to the said remand report, Shri V.K. Jain, AR of the assessee attended before the Id. CIT(A) and prayed for admission of additional evidences. We find that the Id. CIT(A) had first addressed the issue of non-receipt of statutory notices issued by the Id. AO and the non-service of assessment order as claimed by the assessee. The Id. CIT(A) by elaborate reasoning and by considering the behavior of the assessee in not attending to the scrutiny assessment proceedings before the Id. AO despite knowing that the scrutiny proceedings were already initiated in its case, proceeded to dismiss the entire replies given by the assessee and concluded that the delay in filing of appeal before him by

almost 4 and half years could not be condoned, as no valid reasons were stated by the assessee. Accordingly, the appeal of the assessee was dismissed by the assessee *in limine* by not condoning the delay. In this regard, it would be relevant to reproduce the operative portion of the order of the Id. CIT(A) which is as under:-

“7. As regards grounds of appeal raised by the appellant Ground no. 6 and 7 are of consequential nature, Ground No.4 and 5 relate to the issue of brought forward losses and TDS credit. The appellant has also filed an application u/s 154 regarding set off of an unabsorbed depreciation and brought forward business losses on 13th July, 2015 which is stated to be pending before the Assessing Officer. These issues fall within the purview of section 154 and any decision which may be given in this appeal shall not prejudice the statutory remedy available to the appellant u/s 154, if otherwise permissible as per Act. Ground no. 2 and 3 relate to the merits of the issue. However, Ground no. 1 deals with the validity of assessment order as the service of notices u/s 143(2) has been denied.

8. In the above background, Ground no. 1 of the appeal is being up first for adjudication. As per the remand report, it is a matter on record that the first 3 notices i.e. notice u/s 143(2) dt. 06th August, 2009, notice u/s 142(1) dt. 14th January, 2010 and notices u/s 142(1) dt. 05th August, 2010 were issued at the address given in the relation which is 42, Anand Lok, New Delhi-110049. This is also a matter of record that the AR of the appellant attended with request for adjournment on 27th August, 2009, in response to notice u/s 143(2) dt. 06th August, 2009. This fact was reiterated in the second remand report dt. 23rd February, 2017. Therefore, the appellant was aware that the scrutiny assessment proceedings for A. Y. 08-09 were initiated. In fact, in the appellant's case scrutiny assessment order has been passed almost every year. The assessment/ appellate orders of A. Y. 06-07, 07-08, 09-10, 10-11, 12-13 and 13-14 have in fact been filed by the appellant. In the assessment order for A. Y. 07-08 passed on 17th December, 2009, there is a reference of order sheet proceedings dt. 20th November, 2009. For A. Y. 09-10, the notice u/s 143(2) was issued on 27th August, 2010. Therefore, the proceedings for both the A. Y. 08-09 and 09-10 were under way at that time. The notice u/s 143(2) for the year under appeal was issued on 06.08.2009. The proceedings for A. Y. 09-10 were under progress when even subsequent notices u/s 142(1) were issued for year under appeal including the show cause notice u/s 271(1) (b) dt. 06th October, 2010 and all these notices were issued at the address 42, Anand Lok, New Delhi-110049. The assessment order for A. Y. 06-07 and 09-10 were passed by DCIT Circle 11(1) while the order under appeal has also been passed by DCIT Circle 11(1). For A. Y. 09-10, the notice u/s 143(2) was issued on 27th August, 2010 which was around the same time when notice u/s 142(1) dt. 05th August, 2010 was issued for the year under appeal. However, the assessment order for A. Y. 07-08 was completed by ITO Ward 11 (4) an officer of the same Range. Though the proceedings for different years have been concluded in different calendar years i.e. 2008, 2009, 2010 and 2011, it does not negate the fact that the appellant is claiming non-receipt of notice of the year under appeal at the same address at which the notices of other years were served. As clarified by the AO in the remand report only the final show cause notice u/s 144 and assessment order was sent at the factory address, which was located by the Assessing Officer as there has been no compliance in respect of earlier notices. The website of the company even today mentions the said address as the

address of Metal (ROPP) Division Unit 1 and in the written submissions also, it has not disowned the said address. Therefore, the assessment order was sent at the address, which was the appellant's address only and the same was not returned unserved by postal authorities i.e. it was served on that address. If it did not reach the registered officer from the factory, the issue becomes an internal matter of the appellant company and it can not be accepted that the order was not served in January, 2011. Moreover, once the appellant was aware of the scrutiny assessment proceedings in view of service of the first notice dt. 06th August, 2009, the appellant's contentions that for almost 5 years, it was not aware of assessment order having been passed fails the test of preponderance of probability. Therefore, appellant's contention that the notice u/s 143(2) dt. 06th August, 2009 was not served on it, is not accepted and therefore, Ground no.1(a) and Ground no. 1(b) are dismissed. Ground no. 1(c) is also dismissed for the above reasons. It is also not accepted that the assessment order was not served in January, 2011 as postal department is an agent of the addressee and it did not return the order as unserved.

9. Therefore, it is a case in which appeal has been filed after the delay of approximately four and a half years. Considering the facts, discussed in this order, such a long delay in filing of appeal can not be condoned and, therefore, the appeal is not admitted and consequently dismissed. Since, the appeal has not been admitted the decision on other grounds of appeal is not required.

10. In the result, the appeal is dismissed as in the admitted."

5. We find that even before us, the assessee had not even bothered to file a condonation petition explaining the reasons for delayed filing of appeal before the Id. CIT(A). Hence considering the continuous cavalier attitude of the assessee in not responding to the hearing notices right from assessment stage, we do not deem it fit to interfere in the order of the Id. CIT(A) dismissing the appeal of the assessee as not admitted. Accordingly, the grounds raised by the assessee are dismissed.

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

Order pronounced in the open court on 08.05.2023.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 08th May, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi