

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH.C.N. PRASAD, JUDICIAL MEMBER**

ITA No.242/Del/2021  
Assessment Year: 2013-14

<b>Adaab Hotels Ltd. 81, Adchini Sri Aurbindo Marg, New Delhi-110017 PAN No.AABCA0850G</b>	<b>Vs</b>	<b>DCIT Circle – 1(2) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Gautam Jain, Advocate
Respondent by	Sh. Kanv Bali, Sr DR

Date of hearing:	25/05/2023
Date of Pronouncement:	29/05/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal filed by the assessee is preferred against the order of the CIT(A)-1, New Delhi dated 28.08.2019 pertaining to A.Y.2013-14.

2. The grievance of the assessee read as under :-

*“1. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding a disallowance of Rs.*

2,68,537/- out of interest paid on loans raised for business purposes and eligible for deduction u/s 36(l)(iii) of the Act.

2. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts and otherwise too act without jurisdiction in holding that “interest free loans given to directors are perquisites u/s 17 of the Income Tax Act read with Rule 3(7)(i) of the Income Tax Rules’ 1962 and also directing the learned Assessing Officer to take appropriate action so as to tax the perquisites under section 17 of the Act read with Rule 3(7)(i) of the Income Tax Rules in the hands of the directors in respect of interest free loans given to directors.

3. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts and acted without jurisdiction in directing the learned Assessing Officer to take appropriate action for not deducting TDS from the perquisites in respect of interest free loans given to directors.

4. That the learned Commissioner of Income Tax (Appeals) has framed the impugned order without granting any opportunity to the appellant and therefore the same is contrary to principles of natural justice and hence vitiated.

Prayer - It is therefore, prayed that, it be held that disallowance made and sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant company be allowed and directions issued by the learned Commissioner of Income Tax (Appeals) are without jurisdiction and therefore may kindly be deleted.”

3. At the very outset the Counsel for the assessee did not press ground No.1 and 4 and the same is dismissed as not pressed.

4. The first appellate order was served upon the assessee on 30.09.2019 and as such the appeal was due to be filed by 29.11.2019 whereas the appeal has been filed on 28.08.2019 leading to a delay of 475 days. If the period of corona during which the Hon'ble Supreme Court has suspended the period of limitation is excluded then the effective delay comes to 106 days.

5. Requesting the condonation of delay the assessee stated that when the CIT(A) has given a substantial relief to the assessee the management of the company was under a bonafide belief that there is no requirement to prefer an appeal. The management did not pay any attention to the directions issued by the CIT(A) pursuant to which notice u/s. 148 of the Act was issued on the director of the assessee company. It was then the management realised its mistake and was advised by the Counsel to file appeal immediately.

6. The Hon'ble Supreme court in the case of Ram Nath Sao Vs. Gobardhan Sao and Others 2002 AIR 1201 has held as under :-

“Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. **However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit.** While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”

[Emphasis Supplied]

7. In the case of Collector Land Acquisition Vs. Mst. Katiji &

Ors.167 ITR 471 the Hon'ble Supreme Court held as under :-

“The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in the meaningful manner which sub serves the needs to justice – that being the life – purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy”.

8. The Hon'ble Supreme Court in the case of N. Balakrishnan V. M. Krishnamurthy 7 SCC 123 held as under :-

*“It must be remembered that in very case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses” [Emphasis Supplied]”*

9. Considering the contents of the affidavits in the light of the aforementioned judicial decisions we are of the considered view that the technicalities should not come in the way in imparting justice, the delay is accordingly condoned.

10. The substantive grievance argued before us read under :-

2. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts and otherwise too act without jurisdiction in holding that “interest free loans given to directors are perquisites u/s 17 of the Income Tax Act read with Rule 3(7)(i) of the Income Tax Rules’ 1962 and also directing the learned Assessing Officer to take appropriate action so as to tax the perquisites under section 17 of the Act read with Rule 3(7)(i) of the Income Tax Rules in the hands of the directors in respect of interest free loans given to directors.*

3. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts and acted without jurisdiction in directing the learned Assessing Officer to take appropriate action for not deducting TDS from the perquisites in respect of interest free loans given to directors.*

11. The bone of contention is the following directions of the CIT(A) :-

**I have carefully considered the submission of the appellant company. Interest free loans given to directors are perquisites under Section 17 of the Income Tax Act, 1961 read with Rule 3(7)(i). Accordingly, the AO is directed to take appropriate action so as to tax the perquisites under Section 17 of the Income Tax Act, 1961 read with Rule 3(7)(i) in the hands of the directors in respect of interest free loans given to directors. The AO is also directed to take appropriate action for not deducting TDS from the perquisites in respect of interest free loans given to directors. Ground No. 1 is decided as above.**

12. The Counsel vehemently stated that while giving the aforementioned directions the CIT(A) exceeded the powers vested upon him for disposing any appeal before him. It is the say of the Counsel that the CIT(A) has decided something which was not in the grounds of appeal raised before him.

13. Per contra the DR read the provisions of section 251 of the Act and pointed out that the directions of the CIT(A) are well within the explanation appended to provision of section 251 of the Act. Hence, there is not error or infirmity in the directions of the CIT(A).

14. We have given a thoughtful consideration to the orders of the first appellate authority. It is true that the aforementioned directions were not necessary in so far as disposing the grounds of appeal raised before the CIT(A) :-

*(1) "In disposing of an appeal, the Commissioner (Appeals) shall have the following powers-*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;*

*(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;*

*(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*

*(c) in any other case, he may pass such orders in the appeal as he thinks fit.*

*(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.”*

15. In the case in hand after deciding the grounds the CIT(A) directed the AO to take appropriate action for not deducting TDS from the perquisite in respect of interest free loans given to directors and to take appropriate action to tax the perquisites

u/s. 17 of the Act. In our considered view these directions were unwarranted and uncalled for as the issue was not before the CIT(A) no such power has been granted by the Act, therefore, the impugned direction of the CIT(A) is held to be in excess of the jurisdiction conferred by section 251 of the Act and hence same are directed to be deleted. Ground No.2 and 3 taken together are allowed.

Order pronounced in the open court on 29.05.2023.

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

\*NEHA\*

Date:- .05.203

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI