

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY
JUDICIAL MEMBER
ITA No. 1630/Mum/2020 (A.Y. 2003-04)

Vikas M. Tulsian

95,96, Govt. Industrial Estate,
Charkop, Kandivali (W),
Maharashtra-400067.
Mazgaon, Maharashtra-400010.

PAN: ABRPT5825A

..... Appellant

Vs.

CIT(A)-44,
Room No. 708, 7th Floor,
Kautilya Bhavan, C-41 to C-43,
G Block Bandra Kurla Complex,
Bandra (East), Mumbai-400051.

..... Respondent

Appellant/Assessee by : None
Respondent/Department by : Ms. Mini Vinod, DR
Date of hearing : 30/05/2023
Date of pronouncement : 30/05/2023

ORDER

N.K. CHOUDHRY, J.M:

This Assessee/Appellant herein has preferred this appeal against the order dated 03.02.2012 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-35, Mumbai {in short 'Ld. Commissioner'} u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') for AY 2003-04.

2. At the outset, I observe that there is a delay of 76 days in filing of the instant appeal occurred during the Covid-19 period which has been exempted by the Hon'ble Apex Court. Vide order dated 23.09.2021 in M.A. No. 665/2021 in SMW(C) No. 3/2020 held as under:

"I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and 10 (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications,

including for legal purposes, and educational and job-related requirements.”

As a sequel to disposal of MA No.665/2021, pending interlocutory applications, including the applications for intervention/impleadment, also stand disposed of.”

Emphasis supplied

3. Hence, in view of order of Hon'ble Apex court, the delay of 76 days in filling of instant appeal is condoned.

4. Coming to the merit of the case, I observe that the Assessing Officer (in short "AO") vide order dated 28.12.2010 under section 147 r.w.s. 143(3) of the Ac, made disallowances/additions of Rs. 5,30,000/- and Rs. 14,00,746/- respectively on account of Electricity Charges and Salary expenses paid.

5. The assessee being aggrieved challenged the re-opening of the assessment proceedings under section 147 of the Act as well as merit of the case. The Ld. Commissioner vide para-4 of its order without analyzing the merits of the case decided the appeal of the assessee and rejected the same by cryptic order. Hence, for just decision of case and for the ends of justice, I am inclined to remand the instant case to the file of Ld. Commissioner for decision afresh on merit, suffice to say by affording reasonable opportunity of being heard to the assessee. I also direct the assessee to co-operate with the appellate proceeding before the Ld. Commissioner and to file the requisite document and to appear as and when would be required. In case of default the Assessee shall not be entitled for any leniency.

6. In the result, appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30 day of May, 2023.

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

SK, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Dy. /Asstt.Registrar)
ITAT, Mumbai