

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.601/M/2023
Assessment Year: 2012-13**

M/s. Access Diamonds Pvt. Ltd., Office No.15, Floor- Mezzanine, Laxmidas Khimji Market, 36/38, Kalbadevi Road, Vittalwadi, Mumbai – 400 002 PAN: AAHCA0551C	Vs.	The Dy. Commissioner of Income Tax, Central Circle-7(1), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, A.R.
Revenue by : Shri Manoj Kumar Sinha, Sr. A.R.

Date of Hearing : 15 . 12 . 2023
Date of Pronouncement : 20 . 12 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

At the very outset the Ld. A.R. for the appellant, M/s. Access Diamonds Pvt. Ltd. (hereinafter referred to as 'the assessee') brought to the notice of the Bench that this appeal is filed late by 1287 days and sought to condone the delay by moving an application for condonation of delay supporting with an affidavit on the grounds inter-alia that the assessee had engaged Shri Manish Panwar, Chartered Accountant for looking after the income tax

matters and has also authorised him as authorised representative to appear on behalf of the assessee before appropriate authority; that the assessee had provided all the relevant documents/materials related to the appeal in question; that Shri Manish Panwar, Chartered Accountant appeared for the assessee in income tax proceedings on various occasions and the assessee believed that he has made all the necessary compliances including reply to the notices and representing before the appropriate authority by filing appeal before the appellate authorities; that but unfortunately he (Shri Manish Panwar, Chartered Accountant) has failed to perform his obligation to file the appeal within the prescribed limit due to reasons known to him; that subsequently it has come to the notice of the assessee that the appeal against the impugned order passed by the Ld. CIT(A) has not been filed and he has tried to connect with the then A.R. but he was unavailable and subsequently it has come to the notice that Shri Manish Panwar, Chartered Accountant has surrendered his certificate of practice to pursue higher studies abroad; that the A.R. engaged by the assessee failed to intimate as to not filing the appeal which caused delay, which is neither intentional nor wilful.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the fact that the entire delay caused in filing the present appeal is attributed to Shri Manish Panwar, Chartered

Accountant who pursued the matter before lower income tax authorities but had failed to file the appeal within time on account of surrendering his certificate to pursue his studies abroad.

4. We are of the considered view that mistake or negligence on the part of the Chartered Accountant (Shri Manish Panwar) should not be attributed to the assessee which is a sufficient cause to condone the delay. So in view of the matter by following the principle laid down by the Hon'ble Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) wherein it is held that "it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non deliberate delay," the delay of 1287 days in filing the present appeal is hereby condoned and present appeal is ordered to be registered and heard on merits today itself by the Bench.

5. The assessee by filing present appeal against the order dated 30.03.2018 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] confirming the penalty levied by the Assessing Officer (AO) under section 271(1)(c) of the Income Tax Act, 1961 (for short the Act) on the grounds inter-alia that:

"(1) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the penalty imposed by the Ld. A.O. of Rs. 4,43,175 under section 271(1)(c) of the Act, on account additions made of Rs. 13,03,839 with respect to MVAT written off during the subject AY in the assessment proceedings.

(2) Looking to the facts and in the circumstances of your Appellant's case the said addition and the imposition of penalty confirmed by the Ld. CIT(A) is incorrect and invalid and ought to be deleted.

(3) In reaching to the conclusion and making the aforesaid additions/disallowances, the Ld. CIT (A) omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.

(4) The assessment is completed in gross violation of principles of natural justice and hence bad in law and void and ought to be quashed.

(5) The appellant craves leave to add to, alter, amend, modify and/ or delete any or all of the above said ground(s) of appeal. The appellant reserves its right to file further submissions in the appeal.

It is therefore, prayed that:

i. The Hon'ble Tribunal may allow the appeal.

ii. Any other Order as the Hon'ble Tribunal deem fit and proper in interest of the Appellant."

6. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of assessment framed under section 143(3) of the Income Tax Act, 1961 (for short the Act) assessing the income at Rs.12,94,907/- by making addition of Rs.13,03,839/- on account of M-Vat written off, the Assessing Officer (AO) initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income and thereby concealment of income. Declining the contentions raised by the assessee, the AO proceeded to levy the penalty to the tune of Rs.4,43,175/- being 100% of the tax sought to be evaded for furnishing inaccurate particulars of income.

7. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the penalty levied by the

AO by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

8. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

9. At the very outset it is brought to our notice by the Ld. A.R. for the assessee that assessment order on the basis of which penalty levied by the AO and confirmed by the Ld. CIT(A) has since been set aside to the AO by the co-ordinate bench of the Tribunal in assessee's own case in ITA No.600/M/2023 for A.Y. 2012-13 order dated 01.09.2023.

10. We have perused the order (supra) passed by the co-ordinate bench of the Tribunal in quantum order on the basis of which penalty was levied by the AO confirmed by the Ld. CIT(A), has since been set aside to the file of the AO by allowing the appeal filed by the assessee for statistical purposes. In the given circumstances when assessment order on the basis of which penalty was levied is no more in existence having been set aside penalty levied by the AO and confirmed by the Ld. CIT(A) is also not sustainable in the eyes of law hence ordered to be deleted and remitted back to the AO to decide in accordance with law by taking call on the basis of assessment proceedings pending before him.

11. Resultantly, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 20.12.2023.

**Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 20.12.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.