

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

**BEFORE SH. G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA Nos.201 & 202/Del/2023
(Assessment Years: 2009-10 & 2011-12)

Tirupati Buildings & Offices P. Ltd., Welcome Hotel, Sector-10, Dwarka City, New Delhi. PAN No.AACCT7060J	Vs.	ACIT Central Circle-18, ARA Centre, Jhandewalan Extn., New Delhi.
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Mahavir Singh, Adv.
Revenue by	Ms. Sapna Bhatia, CIT-DR

Date of hearing:	21.12.2023
Date of Pronouncement:	24.01.2024

ORDER

PER ANUBHAV SHARMA, JM :

The appellant has come in appeals against the common order dated 31.08.2022 passed by the Learned Commissioner of Income Tax (Appeals)-27, New Delhi [in short 'Ld. CIT(A)'] being Appeal Nos. 27/10148/2018-19 and 27/10147/2018-19, pertaining to Assessment Years 2009-10 & 2011-12 respectively.

2. At the time of hearing, it was pointed out by Ld. AR that in ITA No.202/Del/2023 for AY 2011-12 there is a delay of 304 days and ITA No.201/Del/2023 for AY 2009-10 there is a delay of 92 days in filing of the appeals.

3. Ld. AR has submitted that against the impugned order dated 31.08.2022 assessee had approached the Hon'ble Delhi High Court by way of writ petition which was disposed of by order dated 07.10.2022 with observation that assessee has recourse to alternate remedy of appeal before the Tribunal and this order of Hon'ble High Court was challenged before the Hon'ble Supreme Court but there was no relief to the assessee and the SLP of the assessee was dismissed by order dated 31.08.2022.

4. In the light of aforesaid facts and circumstances, reconsider it an appropriate case to condone the delay in both the appeals. Accordingly, the application for condonation of delay stands allowed.

5. The facts in brief are that original assessment in case of assessee was completed u/s 153A/143(3) of the Act in AY 2009-10 and u/s 143(3) of the Act in AY 2011-12 and additions were made on account of unexplained cash credits u/s 68 and on account of share capital in AY 2009-10 and on account of income surrendered during search in AY 2011-12. The appeals of assessee against the order dated 28.03.2013 were allowed by Ld.CIT(Appeals)-17, New Delhi by respective orders dated 25.11.2014. The appeal for AY 2011-12 was partly allowed and addition made on account of amount surrendered was confirmed by Ld.CIT(A). The Department had come up in appeal before the Tribunal and on failure of the assessee to appear by order dated 28.05.2018 the appeals of Revenue were allowed for statistical purposes and the issues were restored to the files of AO to decide the issue afresh. The AO had called for response of the assessee and by order dated 31.10.2018 the additions were sustained. The assessee approached the Ld.CIT(A) where an additional ground was taken that

the Addl. CIT, Delhi has granted the approval u/s 153D in mechanical manner. The Ld.CIT(A) has dismissed the appeal of the assessee in both the assessment years for which the assessee is in appeal before this Tribunal and at the time of hearing in regard to additional ground Ld. AR has relied on the order of coordinate bench in ITA No.2405/Del/2016 for AY 2010-11 in assessee's own case, where the approval u/s 153D given by Addl. Commissioner of Income Tax, Central Range-IV, New Delhi dated 28.03.2013 was found to be vitiated. Ld. AR has accordingly submitted thus, this additional ground stands decided in favour of the assessee by the coordinate bench.

6. As we consider the coordinate bench order dated 09.02.2023 in the case of assessee for AY 2010-11 it comes up that taking cognizance of the fact that another coordinate bench in the case of Sanjay Duggal Vs. ACIT, ITA No.1813/Del/2019 order dated 19.01.2021 and the order of coordinate bench in case of Subhash Dabas Prop. of Tirupati Construction Company and Tirupati Buildings & Offices Pvt. Ltd. for AY 2010-11 and 2011-12 observed that in the approval dated 28.03.2013 was given collectively in the case of the Subhash Dabas and the present assessee company M/s Tirupati Buildings & Offices Pvt. Ltd. The coordinate bench concluded that the approval was given without application of mind and the same is invalid in law and liable to be quashed.

7. Ld. DR could not cite any distinguishing fact.

8. In the light of aforesaid following the coordinate bench order in favour of the assessee in AY 2010-11 (supra), we allow the ground nos. 2 to 5 in both the appeals.

9. Consequently, the appeals of assessee stand allowed and the impugned assessment orders are quashed for want of valid approval u/s 153D of the Act.

Order pronounced in the open court on 24.01.2024

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 24.01.2024

**Kavita Arora, Sr. PS*

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

ASSISTANT REGISTRAR
ITAT NEW DELHI