

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 2129/Mum/2023

(Assessment Year: 2013-14)

MW Corp Private Limited
99, Niranjana, Ground Floor,
Marine Drive,
Mumbai-400 002

(Appellant)

Vs.

National Faceless Appeal
Centre,
Delhi- 110078

(Respondent)

PAN No. AAFCM1365G

Assessee by : Mr. Wasim Khan, AR
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 01.02.2024
Date of pronouncement : 26.02.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. MW Corp. Private Limited, (the assessee/appellant) has filed appeal in ITA number 2129/M/2023 for assessment year 2013 – 14 against the appellate order passed by The Commissioner Of Income Tax, Appeals, National Faceless Appeal Centre (NFAC), Delhi [the learned CIT (A)] wherein appeal filed by the assessee against assessment order passed under section 143 (3) of the act dated 25 March 2016 by The Income Tax Officer Ward (4) (2)(4), Mumbai (the learned AO) is dismissed.
02. The learned CIT(A) dismissed appeal of the assessee for the reason that assessee was given a notice for hearing on



5 occasions and except filing an adjournment petition, the assessee did not present its appeal and therefore the learned CIT(A) was of the view that assessee is really not aggrieved with the assessment order and therefore it is not interested in prosecuting the same, therefore, he upheld the order of the learned AO without considering the appeal on the merits of the case.

03. Assessee has raised many grounds of appeal on the issues in the appeal memo on the merits of the case.
04. As per facts available on record, assessee is engaged into the business of investing in financial activities filed its return of income declaring total income of Rs. 679,370/- on 29/9/2013. The return of income was picked up for scrutiny and assessment was completed under section 143 (3) of the act assessing the total income of the assessee at Rs. 9,592,770. The learned assessing officer has treated the guarantee commission income to the extent of Rs. 50 lakhs as income from other sources instead of income from business and profession as claimed by the assessee. The AO has further treated the interest income of Rs. 806,981 as income from other sources as instead of income from business or profession because of the amount is received on short-term parking of funds in the fixed deposit receipt with banks. The AO has further disallowed the expenditure of Rs. 6,191,280 on account of finding that no business activity is carried on by the assessee.



05. Aggrieved, appeal was preferred before the learned CIT(A) who disposed of the appeal of the assessee on 20/3/2023 without deciding the merits of the reason that assessee was issued notices on five different occasions, on one occasion assessee sought adjournment and another four occasions nothing was presented therefore, the learned CIT(A) noted that assessee is not interested in pursuing the appeal.
06. Assessee is aggrieved with that appellate order and is in appeal before us. Appeal was found to be filed late by 20 days. In response to the notice by the registry, assessee filed an affidavit stating that order is passed on 20/3/2023 and the appeal should have been filed on or before 18/05/2023. The managing director of the company was required to sign the appeal. He was travelling from March 2023 to May 2023 outside Mumbai due to professional and personal reasons. Therefore, the appeal could not be filed in time, so it resulted into delay of 20 days. The affidavit says that the delay is not on account of any mala fide intention or assessee does not gain by filing the delayed appeal. Therefore, condonation petition filed by the assessee should be considered and delay may be condoned.
07. The learned authorized representative reiterated the facts stated in the application and affidavit of managing director.
08. The learned departmental representative objected to the petition and stated that delay may not be condoned.

09. We have carefully considered the contention in the petition filed by the assessee for condoning the delay of 20 days in filing of the appeal. We have also perused the reason given by the managing director of the company in filing the appeal late by 20 days. On consideration of the same, we find that admittedly appeal is filed late by the assessee by 20 days. However due to the travelling of managing director for personal and business reasons during the month when of the was due to be filed is a sufficient cause for not filing the appeal in time. Reason for filing the appeal late was not doubted and further by filing appeal late, assessee does not derive any advantage. In fact, assessee is facing more hurdle in getting its appeal adjudicated. Therefore, as the delay is small, without any motive, supported by affidavit showing sufficient cause, we condone the same.
010. On the merits, the learned CIT(A) has not decided the issue as assessee failed to appear before him on 5 different occasions, the learned CIT(A) noted that assessee is not interested in pursuing the appeal as it is not aggrieved with the assessment order. Naturally when on many occasions' notices were given by the appellate authority and assessee does not remain present before him or make any submission, endeavour of appellate authority in providing justice to the assessee are defeated. In fact, it is also a proposition that the learned CIT(A) should have decided the issue on merits of the case. Therefore, as the first appellate authority has not decided the issue on the merits of the case, we restore the whole



appeal to the file of the learned CIT(A) to decide it on the merits of the case. As assessee has remained absent before him on all the occasions, assessee is directed to represent the case by filing whatever submission it wants to, as soon as opportunity of filing such evidence is provided, without seeking any further adjournment, which may be considered by the learned CIT (A). In the result, without deciding the issue on the merits of the case, the appeal of the assessee is allowed for statistical purposes restoring it before the learned CIT(A) to decide on the merits of the case.

011. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26.02. 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.02. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai