

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1444/Kol/2023
Assessment Year: 2016-17

Malaya Mukherjee B-132, Aldrin Path Bidhannagar Durgapur - 713212 [PAN : ALSPM9084D]	Vs	Dy. Commissioner of Income Tax, Circle-1, Durgapur
--	----	---

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	--------------------------

Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 29/02/2024
घोषणा की तारीख /Date of Pronouncement: 21/03/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dt. 20/11/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:-

"1. For that the Ld CIT(A) erred in dismissing the appeal as non-admissible on the ground that there was three days delay in filing of the appeal when the assessment order was dated 14.12.2018 which date was stated in the memo of appeal but in fact, the order was not served or uploaded during the office hours on 14.12.2018 and was even signed after close of office hours and further 15th and 16th December being Saturday and Sunday, there was no delay and the appeal was filed within time when the actual date of service is taken.

2. For that the Ld CIT(A) erred in dismissing the appeal on the ground of delay in filing of appeal by only 3 days without even granting any opportunity of being heard to the assessee.

3. *For that the Ld CIT(A) should have condoned the delay since the delay if any was from the chamber of the counsel for the assessee who prepared and uploaded the appeal.*

4. *For that the Ld CIT(A) should have taken a lenient view by allowing condonation of delay since it was only a delay of 3 days.*

5. *For that the Ld CIT(A) should have decided the appeal on merits holding that the difference of Rs 60,07,197/- in the closing WDV of Plant & Machinery was only because the sale consideration of the block of asset being Rs 60,07,197/- was reduced from the opening balance WDV as per section 43(6) and the depreciation was thereafter charged in the same manner, thus there was no mistake, the sale price of machine was duly recorded and the addition was not justified.*

6. *For that the Ld CIT(A) should have allowed the appeal by deleting the addition made by AO since the mistake done by assessee in the ITR did not result into any additional claim of depreciation or tax evasion.*

7. *For that on the facts and circumstances of the case, the order of the CIT(A) be modified and relief be provided to the assessee."*

3. Though the assessee has raised seven grounds, the ld. Counsel for the assessee at the outset submitted that on account of delay of three days, the ld. CIT(A) has dismissed the appeal of the assessee as not admissible without passing a speaking order dealing with the merits of the case. He prayed that the issues involved in this appeal be restored to the file of the ld. CIT(A) for fresh adjudication on merits.

The ld. D/R, vehemently argued supporting the orders of the lower authorities.

4. We have heard rival contentions and perused the material available on record. We find that the assessee is an individual and declared income of Rs. 73,35,580/- in the e-return furnished for Assessment Year 2016-17 on 29/09/2016. Case selected for limited scrutiny through CASS followed notice u/s 143(2) and 142(1) of the Act. The reason for scrutiny was "difference between opening and closing

balances of WDV of plant & machinery". The Id. Assessing Officer noticed that under the head "plant & machinery", assessee had shown opening balances of Rs.1,69,66,200/-. Further the Id. Assessing Officer took note of the income tax return of the preceding year and found that the closing balance was shown at Rs.2,29,73,397/-. So, there was difference of Rs.60,07,197/- between the closing of preceding financial year and opening of current financial year. Though the assessee stated that there was a sale of Rs.60,07,197/- which took place at the end of the financial year 2015-16 but inadvertently, the same was reduced from the opening balance. He further submitted that the transactions are duly reflected in the audited financial statement. However, the Id. Assessing Officer was not satisfied. When the matter travelled before the Id. CIT(A), there was a delay of three days in filing of the appeal by the assessee and, therefore, the Id. CIT(A) dismissed the appeal of the assessee as inadmissible. We, after hearing the Id. Counsel for the assessee find that the delay was not intentional and had occurred due to the last two days being Saturday and Sunday respectively. Thus, the delay of three days before the Id. CIT(A) is hereby condoned by us and the issues are remitted back to the file of the Id. CIT(A), who shall decide the appeal of the assessee on merits after taking into consideration the financial statements and the sale transactions which is claimed by the assessee to have been duly entered in the books and the alleged difference is only on account of reducing the sale consideration from the opening balance. Needless to mention that the assessee shall file all necessary documents/evidences before the Id. CIT(A), in support of its claim.

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

Order pronounced in the Court on 21st March, 2024 at Kolkata.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 21/03/2024

SJ/S

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata