

**THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 1384/KOL/2023
Assessment year: 2012-2013**

***M/s. Manmohak Infrastructure Pvt. Ltd.,.....Appellant
56E, Hemanta Basu Sarani,
Stephen House, 4th Floor, Room No. 58C,
Kolkata-700001
[PAN:AAHCM1736B]***

-Vs.-

***Income Tax Officer,..... Respondent
Ward-10(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

N o n e, appeared on behalf of the assessee

*Shri P.P. Barman, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing: April 01, 2024

Date of pronouncing the order: April 2, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre (NFAC), Delhi dated 22.09.2023 passed for A.Y. 2012-13.

2. The assessee has taken four grounds of appeal. However, its grievances revolve around a single issue, namely Id. CIT(Appeals) has erred in confirming the addition of Rs.3,77,00,000/-, which was added by the Id. Assessing Officer with the aid of Section 68 of the Income Tax Act.

3. Brief facts of the case are that the assessee has filed its return of income on 30.09.2012, declaring 'NIL' income. The case of the assessee was selected for scrutiny assessment and notices under sections 143(2)/142(1) were issued and served upon the assessee. The assessee did not respond to those notices. The Id. Assessing Officer passed the assessment order under section 144(1) of the Income Tax Act, i.e. according to his best judgment. He observed that on verification of Income Tax Data Base, it revealed that assessee-company had issued paid-up shares including share premium amounting to Rs.3,77,00,000/-. As observed earlier, the assessee did not respond any of the notices, therefore, the Id. Assessing Officer treated receipts of such money as unexplained cash credit and made an addition of Rs.3,77,00,000/-.

4. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the Id. CIT(Appeals). The Id. CIT(Appeals) has issued five notices in a row, but the assessee did not submit anything. Hence the addition stands confirmed. The Id. CIT(Appeals) has dismissed the appeal.

5. The Registry has pointed out that appeal is time-barred by 24 days. In order to explain the delay, the assessee has annexed a letter alongwith the appeal, which reads as under:-

MANMOHAK INFRASTRUCTURE PRIVATE LIMITED
56E, HEMANTA BASU SARANISTEPHEN HOUSE
4TH FLOOR KOLKATA-700001
CIN: U70109WB2011PTC162458

To Date -15/12/2023
The Assistant Registrar
I.T.A.T., Kolkata
225C, A.J.C. Bose Road,
Kolkata - 700 020

Before the Income Tax Appellate Tribunal at Kolkata
In the matter of M/s. Manmohak Infrastructure Private Limited.
Assessment Year 2012-2013

Sub.: Request for Condonation of delay.

Respected Sir/ Madam,

With due respect we would like to inform your Goodself that an order u/s 250 of the Act was passed on 22/09/2023 and the due date for filing appeal before the ITAT, Kolkata was 21 November, 2023. However, the appeal couldn't be filed within the due date and hence, there is a delay of 24 days in filing this appeal. The delay is completely unintentional.

In this regard we would like to inform your Goodself that we have send copy of the order u/s 250 of the Act to the tax practitioner. However, he couldn't file the appeal within due date for the following reasons:

1. The tax practitioner Ms. Devuani dutta was busy with filing of submission of e assessment of Under Section 143 (3) proceedings.
2. Upon request for filing of instant appeal, he has shared draft copy of the documents for signing purpose on 15.12.2023

Therefore, from the above it is evident that the delay was unintentional and not on part of the appellant. Hence, we request before your Goodself to kindly condone the delay and for your this act of kindness we shall be ever obliged.
Thanking You,

Yours' truly,
For MANMOHAK INFRASTRUCTURE PRIVATE LIMITED
MANMOHAK INFRASTRUCTURE PVT. LTD
[Signature]
Director
[Abhijit Barman]
Director

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6. In response to the notice of hearing, the assessee did not come present before the Tribunal. With the assistance of Id. D.R., we have gone through the record carefully. A perusal of the assessment order would reveal that it is an assessment framed according to the best judgment of the Id. Assessing Officer. It is an *ex-parte* order. The first available opportunity for the assessee was when it filed an appeal before the Id. CIT(Appeals) and submitted the statement of facts. We have perused that statement of facts available on the record, but in the statement of facts, the assessee has only raised a plea that proper opportunity of hearing was not granted by the Id. Assessing Officer as contemplated in proviso to section 144(1) of the Income Tax Act. The assessee has not pleaded its case on merit. It has not pleaded the details of applicants, their source of money or anything else. In response to four notices, no one has appeared before the Id. CIT(Appeals). The appeal before the Tribunal has made time barred by 24 days. No one has appeared before the Tribunal nor any paper book has been filed, wherein details on merit have been demonstrated before the Id. 2nd Appellate Authority.

7. We are conscious of the facts that punishment in the shape of taxes and penalty could be disproportionate to the negligence of assessee for not appearing before the Id. Assessing Officer or before the Id. 1st and 2nd Appellate Authority, but failure of the assessee to plead its case on merit do exhibit that it is a Company which is on papers only. The shadow prosecutor of the proceeding do ensure procedural compliance of filing appeals before the Appellate Authority in time. Our experience of more than twenty years in

adjudicating such type of litigation do suggest that this type of stand is being taken intentionally so that the time limit to take action in the case of those share applicants could be expired and a plea be raised before the Higher Appellate Forum that matter be remitted back for deciding afresh on merit. After expiry of six years earlier prior to 2021 and now ten years, action in the case of share applicant would not be taken up by the Income Tax Authorities. When we examine these facts and try to strike a balance between the adjudicatory process, then sometime it gives us pain and disappointment. But nevertheless, we have to resolve this dispute according to the material available on record.

8. A perusal of the application filed for condonation of delay, we are of the view that neither an affidavit of the Director is being filed nor exact details are submitted as to how this delay has happened. The assessee has not filed any confirmation from Ms. Devuani Dutta showing that appeal papers were submitted to her within time and she was busy in other tax matters and, therefore, could not file the appeal. To our mind, it is just an effort to persuade us to believe in this make belief story, otherwise there is no substance. Therefore, the delay in filing the appeal is not condoned. The appeal is dismissed being time barred.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 02/04/2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 2nd day of April, 2024

*Copies to :(1) M/s. Manmohak Infrastructure Pvt. Ltd.,
56E, Hemanta Basu Sarani,
Stephen House, 4th Floor, Room No. 58C,
Kolkata-700001*

*(2) Income Tax Officer,
Ward-10(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi*

(4) CIT- , Kolkata

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.