

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. No.253/KOL/2024

Assessment Year: 2018-19

Megacity Inn.

(PAN: ABEFM8988L)

.....

Appellant

Vs.

Dy. Commissioner of Income Tax,

CPC, Bengaluru.

.....

Respondent

Appearances by:

Shri I. Banerjee appeared for Appellant.

Shri Kapil Mondal, Addl. CIT, DR appeared for Respondent.

Date of concluding the hearing : 22.05.2024

Date of pronouncing the order : 08.07.2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Id. Commissioner of Income-tax, Appeal, Addl./JCIT(A)-9, Delhi [in short Id. “CIT(A)”] dated 11.12.2023 arising out of the intimation framed u/s 143(1) of the Act by DCIT, CPC dated 13.05.2019.

2. Grounds of appeal raised by the assessee reads as under:

“1. That on the facts and circumstances of the case and in law, the Ld. Faceless Appellate Authority was not justified in not condoning the delay in filing the Appeal and consequently, summarily concluding the inadmissibility of the Appeal, for being barred by limitation, although in the Affidavit filed

along with the Appeal Memo, the compelling and bona fide reasons leading to the unintended delay, had been clearly and elaborately spelt out.

Without prejudice to the aforesaid grounds, even otherwise, on the facts and circumstances of the case and in law, the Order passed by the Ld. Faceless Appellate Authority is liable to be cancelled and reversed, in view of the fact that even after alleging the non-compliance with the series of hearing notices, rejected the Appeal had been adjudicated, completely on a different ground, i.e., non-filing of the Appeal in time.

Without prejudice to the aforesaid ground, the present appeal, concerned with the merit of disallowance, vide sec. 40(a)(ia), of Rs.12,03,000.00 representing 30% of Rent Payment not subjected to Deduction of Tax at Source, could have been considered by the Ld. Faceless Appellate Authority, as full identity and particulars of the payees, including their address and Permanent Account, were readily available at its end.

Without prejudice to the aforesaid ground, the Appellant prays for the exoneration from the rigors and the corresponding disallowance under sec. 40(a)(ia), of Rs.12,03,000.00, provided under 2nd proviso thereof, if on the necessary verification of the Recipients' records and confirmations, the Tax due on the corresponding Rent of Rs. 40,10,000/-, paid without TDS, is found to have been paid at their end.

The Appellant craves leave for presenting additional grounds, modify/not press anyone or more of the aforesaid grounds, either before or during the Appeal Hearing.”

3. At the outset, Ld. Counsel for the assessee submitted that assessee did not get fair opportunity before the Ld. CIT(A) and also Ld. Cit(A) did not consider the application of assessee for condonation of delay in filing the appeal. He thus, prayed that the delay in filing the appeal before the Ld. CIT(A) may be condoned and matter may be restored to the Ld. CIT(A) for adjudication on merits.

4. On the other hand, Ld. DR vehemently objected to this contention of the assessee stating that the assessee has not given any plausible reason for this huge delay of filing the appeal and also he could not avail the opportunity even when which was granted for nine times by the Ld. CIT(A).

5. We have heard the rival contentions and perused the material available on record. We observe that assessee is a partnership firm

and had furnished its return for AY 2018-19 on 04.09.2018 and thereafter, by the intimation u/s. 143(1)(a) of the Act dated 13.05.2019 certain adjustments were made and assessed the income at Rs.19,83,370/- as against the returned income of Rs.7,80,370/-. As stated before us by the Ld. Counsel for the assessee that assessee was trying to get the demand reduced by way of filing a rectification application as the only issue giving rise to addition was disallowance u/s. 40(a)(ia) of the Act for non-deduction of tax at source. However, there was a delay of eight months for filing the appeal before the Ld. CIT(A) and the assessee's appeal has been dismissed in limine on account of delay.

6. We, however, considering the prayer of the Ld. Counsel for the assessee and in the larger interest of justice and being fair to both the parties and also considering that assessee did not get any fair opportunity to place its submission that disallowance u/s. 40(a)(ia) of the Act is uncalled for and accordingly, condone the delay in filing the appeal before the Ld. CIT(A) and direct the Ld. CIT(A) to admit the appeal and adjudicate the issues on merit after affording reasonable opportunity to the assessee. Assessee is also directed to remain compliant before the Ld. CIT(A) diligently without taking unnecessary adjournment.

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

Order is pronounced in the open court on 8th July, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/- Dr. Manish Borad]
Accountant Member

Dated: 8th July,2024

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – Megacity Inn, Salt Lake Electronic Complex, Sector V, Nayapatty, Kolkata-700102**
- 2. Respondent – DCIT, CPC, Bengaluru**
3. CIT(A), Delhi.
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata