

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.116/Ind/2024
(Assessment Year: 2012-13)

M/s STL Extrusion Pvt. Ltd, 475 Jawahar Marg, Indore	Vs.	ACIT-4(1), Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AA ECS3555M		
Assessee by	Ms. Shreya Jain, AR	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	15.07.2024	
Date of Pronouncement	16.07.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 20.02.2023 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi for A.Y.2012-13.

2. There is a delay of 308 days in filing the present appeal. The assessee has filed an affidavit explaining the reasons for delay. The Ld. AR of the assessee has submitted that the assessee company

was engaged in the manufacturing of PVC pipes and the business operations were continued up to 31.03.2017 and due to heavy loss the company has closed its business on 30.07.2017. Since there was huge losses incurred by the company and was not able to pay even interest to the secured loan creditors the assessee company has sold its factory along with plant and machinery on 06.11.2020, a copy of the sale deed is also filed in support of this contention. The Ld. AR has further submitted that the CIT(A) has issued notices as well as impugned order to the e-mail ID stlaccounts@siddhart.com. however, due to closure of business the said domain was not active and discontinued/disabled by the service provider for non payment of dues and therefore all the notices as well as the impugned order sent on the said e-mail ID by the CIT(A) got bounced back. The management of the company came to know about the impugned order only when the sister concern company M/s Shreepati Steel Tubes Pvt. Ltd received the notices from the CIT(A) in response to the appeal filed by the said company against the similar order passed by the A.O upon which the assessee tried to access the IT portal of the assessee but was not successful due to the reasons that the registered mobile

number of the ex-employee was not available/in existence. Accordingly the assessee requested the A.O vide letter dated 18.01.2024 to make the assessee know the status of the appeal filed by the company. In response to the said letter the A.O provided a copy of the impugned order on 02.02.2024 and thereafter the present appeal was filed on 10.02.2024. Thus, the Ld. AR has submitted that prior to the receipt of the impugned order from the A.O the assessee was not aware or having any knowledge about the impugned order. Thus, the Ld. AR has pleaded that the delay of 308 days in filing the present appeal may be condoned and appeal of the assessee may be admitted for adjudication. On the other hand the Ld. DR has not seriously opposed the condonation of delay by considering the fact that the business of the assessee was closed in the year 2017 itself and both the A.O as well as CIT(A) have passed ex-parte order.

3. We have considered the rival submissions as well as the relevant material on record. The assessee has explained the cause of delay in the affidavit as under:

" 1) That the company STL Extrusion Pvt.Ltd. for the AY 2012-13 filed an appeal before the Ld. CIT(A)2, Indore in which National Faceless Appeal Center, Delhi passed an order u/s 250 summarily rejecting the appeal

filed by the company for the reason that no submission is received even after sending 4 notices on e-mail ID: stlaccounts@siddhart.com without appreciating the fact that the notices sent on above e-mail ID must have bounced back due to the reason that Domain Registrar discontinued/disabled the services due to non-payment.

2. That in the case of sister concern of company M/s. Shreepati Steel Tubes Pvt.Ltd. also filed an appeal against the similar order before the Ld. CIT(A), Raipur for which company has received message on mobile of Shri Govind Neema ex-employee of the said company for hearing of appeal on 5.1.2024 from Ld. National Faceless Appeal Center, Delhi. We therefore tried to access Income tax portal of STL Extrusion Pvt.Ltd. but same could not be accessed due to the reason that on the portal of STL Extrusion Pvt.Ltd. mobile number of ex-employee Shri Mayank Bajpayee was registered which was not in existence. Thus vide letter dated 18.1.2024 we requested the Ld. AO (i.e. ACIT-4(1), Indore) to let us know the status of appeal filed by the company. In response to our above letter the Ld. AO vide e-mail on 2.2.2024 provided us copy of appellate order passed by the Ld. National Faceless Appeal Center, Delhi dated 20.2.2023. On going through the said order it came to our knowledge that appeal filed by the company is summarily rejected by the Ld. National Faceless Appeal on 20.2.2023 without deciding on merits any ground raised by the company.

3) In view of above facts it is clear that the appeal is decided by Ld. National Faceless Appeal Center, Delhi without allowing any opportunity being heard to the company and the company has not received any notice for hearing because the notice of hearing and appellate order sent by Ld. National Faceless Appeal Center, Delhi must be bounced back due to the closure of e-mail ID and appellate order u/s 250 is served on the company on 2.2.2024.

3.1 Thus the assessee has pointed out that due to huge loss incurred by the assessee company it has closed its business on 30.07.2017 which has also resulted to discontinue/disablement of the e-mail ID domain for non payment of dues. Thus the notices issued by the CIT(A) on the e-mail ID stlaccounts@siddhart.com could not be delivered. Since neither all the notices nor the

impugned order was sent and served on the assessee physically therefore, in the facts and circumstances of the case when the assessee company has already closed its business operations in the month of July, 2017, the reasons explained by the assessee are found to be satisfactory being a reasonable cause for a delay of 308 days in filing the present appeals. Hence, the delay in filing the appeal is condoned.

4. The assessee has raised following grounds of appeal:

"That on the facts and in the circumstances of case and in law, the Ld. National Faceless Appeal Center, Delhi erred in summarily rejecting the appeal without deciding the following grounds of appeal on merits urged before him:-

- 1. That impugned order passed by the Ld. A.O is bad in law as well as on the facts. It is based on incorrect interpretation of law and the facts have also been incorrectly construed.*
- 2.1) That on the facts and in the circumstances of the case and in law the Ld A.O erred in reopening the assessment u/s 147 by issuing notice u/s 148 on the basis of information received from other authority without making independent enquiry and without recording own satisfaction.*
- 2.2) That on the facts and in the circumstances of the case and in law the Ld A.O erred in completing the assessment u/s 144 r.w.s. 147 without issuing notices u/s 148 and u/s 142(1) or 143(2). The copy of reason recorded for reopening of assessment is also not provided to the appellant.*
- 2.3] That on the facts and in the circumstances of the case and in law the Principal CIT have might issued approval for reopening of assessment in routine manner without applying his own independent satisfaction.*
- 2.4] That on the facts and in the circumstances of the case and in law the Ld A.O failed to appreciate the fact that office and factories of the appellant company is closed hence question of service of notices does not arises.*
- 3] That on the facts and in the circumstances of the case and in law the Ld A.O erred in passing ex-parte order u/s 144 without issuing any notice u/s 142(1) and without issuing any show cause notice.*

4.1] That on the facts and in the circumstances of the case and in law the Ld A.O erred in stating the fact that appellant company made transaction of Rs. 3,36,53,320/- in the financial year 2011-12 with Juni Indore Sakh Sahkarita Mydt and thereby making the addition of the said amount.

4.2] That on the facts and in the circumstances of the case and in law the Ld A.O erred while making addition of Rs.3,36,53,320/- that company has taken bogus accommodation entry from Juni Indore Sakh Sahkarita Mydt.

5] That on the facts and in the circumstances of the case and in law the Ld A.O erred in charging interest u/s 234B at Rs. 73,86,244."

5. At the time of hearing Ld. AR has pleaded that due to closure of business and discontinue/disablement of the e-mail ID by the domain service provider for non payment of the dues the notices issued by the CIT(A) were not received by the assessee and consequently the appeal of the assessee was dismissed for non prosecution. The Ld. AR has further submitted that the assessment order was also passed ex-parte u/s 144 r.w.s. 147 of the Act therefore, neither the A.O nor the CIT(A) had any occasion to consider and verify the relevant details, documents and explanation to be furnished by the assessee in respect of alleged accommodation entries received by the assessee. Thus the Ld. AR has pleaded that the matter may be remanded to the record of the A.O for fresh adjudication after giving one more opportunity to the assessee to produce the relevant details, documentary evidence and explanation for verification and examination by the A.O.

5.1 On the other hand Ld. DR has not raised any objection if the matter is remanded to the A.O for fresh adjudication after considering the relevant details and evidences to be filed by the assessee.

6. We have considered the rival submissions and carefully perused the impugned orders of the A.O as well as CIT(A). The CIT(A) has dismissed the appeal of the assessee ex-parte due to non prosecution when there was no response on behalf of the assessee to the four notices issued by it. The details of the notices and observation of the CIT(A) are given in para 5 and 5.1 as under:

"5. DECISION

The right to appeal under Chapter XX of the Income-tax Act, 1961, is a invaluable right of a tax payer, therefore, it needs to be exercised with due caution and care by him. It is also worthwhile to mention the famous saying as under.

"VIGILANTIBUS, NO DORMENTIBUS JURIS SUBVENIUNT"

("Law assists those who are vigilant and not those who sleep over their rights")

The facts on record indicate that the appeal was filed on 15/01/2020, which is almost 3 years ago and thereafter in response to various notices of hearing issued by this Office, from time to time, the appellant remained non-cooperative. The events and details of the non-attendance by the appellant, on the said dates are as under.

<i>Sr.No.</i>	<i>Date of issue of notice</i>	<i>Date of which hearing fixed</i>	<i>Remarks</i>
<i>1</i>	<i>23.01.2021</i>	<i>08.02.2021</i>	<i>Hearing Notice has been sent to the appellant via mail lds mentioned below, the appellant has not responded. stlaccounts@siddhart.com</i>

2	30.11.2022	08.12.2022	Hearing Notice has been sent to the appellant via mail ids mentioned below, the appellant has not responded. stlaccounts@siddhart.com
3	19.12.2022	23.12.2022	Hearing Notice has been sent to the appellant via mail ids mentioned below, the appellant has not responded. stlaccounts@siddhart.com
4	01.02.2023	08.02.2023	Hearing Notice has been sent to the appellant via mail ids mentioned below, the appellant has not responded. stlaccounts@siddhart.com

5.1 During the course of appellate proceedings, as is discussed above, neither the appellant nor his AR has made any submission to support his claim. Keeping in view the facts of the case, it is apparent that, the appellant has nothing to offer any explanation support of his grounds of appeal. The conduct of the appellant shows that, the appellant approaching the appeal in a very casual manner and not showing any interest in pursuing the appeal. In this regard, reliance is placed on Gujarat High Court Judgment in case of Fairdeal Filaments Ltd vs. C.I.T. 302 ITR 173. Therefore, it is not required to give further opportunity to such recalcitrant assessee."

6.1 Thus, all these notices were issued to the e-mail ID which is stated to be disabled and discontinued because of closure of business of the assessee and sale of factory building along with plant and machinery and also due to non payment of the dues to the domain service provider. The CIT(A) has not decided the appeal of the assessee on merits but summarily dismissed the appeal due to non prosecution. Even the grounds of appeal have not been

reproduced or discussed by him in the impugned order therefore, the non speaking impugned order passed by CIT(A) without adjudication of the appeal on merits is set aside and the matter is remanded to the record of the jurisdictional A.O for fresh adjudication after verification and examination of the relevant details, evidence and explanation to be filed by the assessee. Needless to say the assessee be given an appropriate opportunity to appear before passing fresh order.

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

Order pronounced in the open court on 16.07.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 16.07.2024

Dev/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore