

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.964/Ahd/2023
(Assessment Year: 2014-15)

M/s. Technodot Engineers Ltd., Plot No. X-22,23,24, GIDC Electronic Estate, Sector-25, Gandhinagar-382024	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(2), Ahmedabad
[PAN No.AABCT5392A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Umedsingh Bhati & Shri Abhimanyu Singh Bhati, A.Rs.
Respondent by:	Shri Ashok Natha Bhalekar, Sr. DR

Date of Hearing	05.07.2024
Date of Pronouncement	22.07.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-11, (in short “Ld. CIT(A)”), Ahmedabad vide order 22.09.2023 passed for Assessment Year 2014-15.

2. The Assessee has taken the following grounds of appeal:-

- “1. The learned Commissioner of Income-tax (Appeals) erred in law and on facts in not allowing condonation application giving reasons for the delay.
2. The learned Commissioner of Income-tax (Appeals) erred in law in dismissing the grounds of appeal without considering the appellant’s stance in every ground and giving sufficient opportunity of being heard to the appellant.
3. The learned Commissioner of Income-tax (Appeals) erred in law and on facts in holding that the appeal is not maintainable u/s 249 as the reasons given for delay of 10 days in filing appeal were without any supporting evidence when the ld. CIT(A) passed the order without affording an opportunity to the appellant to file the same.

4. *The appellant may be allowed to add, amend, alter or raise additional grounds of appeal.”*

3. The Assessee has raised the following revised and additional grounds of appeal:-

“1. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in dismissing the appeal of the Appellant.*

2. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in not providing sufficient opportunity to the appellant.*

3. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in forwarding the Notices of hearing through 'email' despite the appellant having mentioned 'No' to the communication/notice through email in Form No.35 and that too at the wrong email id except Notice dated 13.12.2021.*

4. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in not admitting the appeal being delayed by 10 days and dismissing the appeal terming it as suffering from inordinate delay.*

5. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the addition of Rs.5,07,99,790/- u/s 68 of the Income Tax Act, 1961.*

6. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the disallowance of depreciation amounting to Rs.2,44,896/-.*

7. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the disallowance of Rs.31,85,922/- u/s 36(1)(iii) of the Income Tax Act, 1961.*

8. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the disallowance of Rs.32,831/- u/s 40A(2)(b) of the Income Tax Act, 1961.*

9. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the disallowance of Rs.20,99,981/- out of various expenses.*

10. *The appellant may be allowed to add, amend, alter or raise additional grounds of appeal.”*

4. The brief facts of the case are that during the course of assessment, the Assessing Officer made certain additions to the income of the assessee for a sum of Rs.5,07,99,790/- under Section 68 of the Act, for a sum of Rs.

2,44,896/- towards disallowance of depreciation, for a sum of Rs. 31,85,922/- under Section 36(1)(iii) of the Act and for a sum of Rs. 20,99,981/- towards disallowance of various expenses claimed by the assessee. In appeal, Ld. CIT(Appeals) confirmed the additions by passing ex-parte order by not condoning the delay of 10 days in filing of the appeal on the ground that the assessee failed to show any reasonable or sufficient cause with supporting evidences which prevented him to file appeal within stipulated time. Further, the Ld. CIT(Appeals) also confirmed the additions on merits, on the basis of material available on record.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before going to the merits of the case, the Counsel for the assessee submitted that there was a minor delay of 10 days in filing of appeal before Ld. CIT(Appeals), for which the assessee had a valid explanation. However, since all notices of hearing (but one) were issued by the Ld. CIT(Appeals) at the email ID, which was different from the email ID mentioned in Form 35 and further, in Form 35 itself, the assessee had submitted that the assessee opted for not being served notices of e-mail, there was no valid service of notice, which prevented the assessee from causing appearance before Ld. CIT(Appeals) on the dates mentioned in the notice and give a plausible explanation for the delay in filing of appeal before Ld. CIT(Appeals). Further, the Counsel for the assessee has also filed a paper book giving details of supporting documents to demonstrate that the assessee has a good case on merits and if given an opportunity, the assessee was in a position to demonstrate that no additions are liable to be sustained in the hands of the assessee. Accordingly, the Counsel for the assessee submitted that the matter may be restored to the file of Ld. CIT(Appeals) for de novo consideration, in

interest of justice, for the reason that there was no valid service of notice on the assessee which prevented the assessee to cause appearance before Ld. CIT(Appeals) and further, the assessee has been able to demonstrate that it has a good case on merits, and if given an opportunity of hearing, the assessee would be able to provide all supporting documents in support of its case.

6. In response, the Ld. DR placed reliance on the observations made by CIT in the appellate order.

7. We have heard the rival contentions and perused the material on record. We observe that from the records placed before us, the assessee, in Form 35 had specifically opted for not being served with a notice of hearing over email. Further, we also observe that various e-mail communications were sent by the office of Ld. CIT(Appeals) at e-mail which was different from e-mail which was mentioned in Form 35 (we observe that only one email was served on the correct email address mentioned in Form 35). Accordingly, though Ld. CIT(A) had issued several notices of hearing over email to the assessee, we observe that only one email which was sent by the Ld. CIT(Appeals) contained the correct email address as mentioned in Form 35. Accordingly, in our considered view, this is a case where in the interest of justice, the assessee may be afforded the opportunity to present its case on merits before Ld. CIT(Appeals). This is particularly in light of the fact that the Counsel for the assessee has placed before us paper book containing various supporting documents to demonstrate that the assessee has reasonable case on merits and considering the quantum of additions which have been made in the hands of the assessee, this is a fit case where the assessee may be given an opportunity of hearing to present its case on merits.

8. In the result, the matter is restored to the file of Ld. CIT(Appeals) for de-novo consideration so as to enable the assessee to present it's case on merits. Further, we also direct the assessee to promptly and diligently comply with all notices of hearing issued by Ld. CIT(Appeals) and in case of further non-appearance on part of the assessee before Ld. CIT(Appeals), he would be at liberty to pass appropriate order is in accordance with law, on the basis of material available on record.

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

This Order pronounced in Open Court on	22/07/2024
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Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 22/07/2024

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad