

IN THE INCOME TAX APPELLATE TRIBUNAL “K(SMC)” BENCH, MUMBAI

**BEFORE SHRI AMARJIT SINGH, AM
AND
SHRI ANIKESH BANERJEE, JM**

ITA No.1763/Mum/2024
(Assessment Year: 2010-11)

Red Leaf Entertainment Pvt.
Ltd
128, Runwal Commercial
Complex, Near Santoshi
Mata Mandir, L.B.S. Marge,
Mulund West, Mumbai-400
080

(Appellant)

Income Tax Officer
Ward 15(3)(1),
Vs. Aaykar Bhavan, M.K. Road,
Mumbai-400 020

(Respondent)

PAN No. AAECR5490C

Assessee by : Mr. Mihir Joshi, AR (Virtually present)
Revenue by : Mr. Dhiraj Kumar, DR

Date of hearing: 15.07.2024
Date of pronouncement: 16.07.2024

ORDER

PER ANIKESH BANERJEE, JM:

01. Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi [in short ‘the learned CIT (A)’], order passed under Section 250 of the Income-tax Act, 1961 (in brevity, ‘the Act’) for A.Y. 2010-11, date of order 6th February 2024. The impugned order was emanated from the order of the learned Income Tax Officer, Ward 15(3)(1), Mumbai (in brevity, ‘the learned AO’), order passed under Section 144 read with section 147 of the Act, date of order 16th October, 2017.



02. The assessee has taken the following grounds of appeal:-

"1. On the facts and in the circumstances of the case and as per the law the assessment order dated 16.10.2017 passed by the learned Income Tax Officer, 15(3)(1), Mumbai is non-est since the Appellant was struck off by the Registrar of the Company before and was not in existence on the aforesaid date of order. Thus, the assessment order dated 16.10.2017 and the Impugned Order dated 06.02.2024 may be quashed on this ground alone.

2. On the facts and in the circumstances of the case and as per the law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) ["the learned Commissioner (Appeals)] erred in not condoning the delay and dismissing the appeal in limine. Thus, the learned Commissioner (Appeals) may be directed to condone the delay and thereafter deciding the appeal afresh after hearing the Appellant.

3. Without prejudice to the above, On the facts and in the circumstances of the case and as per the law, the learned Commissioner (Appeals) erred in reaching the conclusion that the Appellant was not interested in providing documents and filing submissions. The Appellant made detailed submissions before the learned Commissioner (Appeals). Thus, the order dated 06.02.2024 may be set aside and the case may be restored back to the file of the learned commissioner (Appeals) for fresh adjudication.

4. *Without prejudice to the above, on the facts and in the circumstances of the case and as per the law, the learned Commissioner (Appeals) erred in confirming the assessment order making the addition of Rs. 15,03,557/- and determining the income at the same amount on a gross basis without allowing any expenses or determining net profits for the year on a reasonable percentage basis. Thus, the addition of Rs. 15,03,557/- may be deleted.*

5. *The Appellant craves leave to add, alter, rescind, or amend any of the above grounds of appeal."*

03. The brief fact of the case is that the assessee was running business of event management and working in different projects. During the impugned assessment year, the assessee received contractual amount, amounting to ₹15,03,557/-. The assessee's case was reopened under Section 148 of the Act. During the assessment proceedings the notice was issued under Section 133(6) of the Act for verification parties but none of the notice was served. The learned AO received this professional income amounting to ₹15,03,557/- which was treated by the Id. AO as bogus and added back in the total income of the assessee.
04. Being aggrieved, the assessee filed an appeal before the learned CIT (A). But the learned CIT (A) has rejected the appeal on the ground of limitation for delay in filing of appeal and the condonation petition was rejected. Being aggrieved on the appellate order, the assessee filed an appeal before us.

05. The learned Authorized Representative (in short 'AR') argued and mentioned that the assessee filed the appeal petition in delay. The condonation petition was filed, and the delay was duly explained. The reason for the delay was that one of the directors who dealt with this income tax matter was seriously ill and was undergoing a liver transplant. The medical documents were duly filed but considering the same, the appeal petition is rejected on the ground of limitation. The learned AR invited our attention in appellate order to the relevant paragraph. The paragraph no.2 is duly reproduced as below:-

"2. As per declaration in Form No.35, the order was served on 16.11.2017 and the appeal for A.Y. 2010-11 was filed, belatedly, on 03.02.2018.

2.1. In the Form No. 35 the appellant has offered following comments seeking condonation of delay:

The Appellant Assessee has not been able to file the Appeal due to some Technical problem and ill health of the Director

2.2. Copies of medical bills and prescriptions were enclosed to justify the delay. I have carefully noted the dates of these bills and prescriptions, last one being dated 15/16.05.2016. Evidently, these have no connection with the delay in filing appeal, which took place in FY 2017- 18. Otherwise also, tax and related matters cannot get stalled in the case of a limited company due to director's health. It is expected that for various compliances a company must be availing services of accountants and chartered accountants. In

other words, with adequate financial and administrative back up in place, health condition of a director can never explain a delay that long.

2.3. It is also intriguing that the director, with his falling health, could manage to execute contracts during the concerned year and in the next year, i.e., in FY 010- 11, but failed to file returns of income in both the years. Under such circumstances, reasoning based on health grounds can never be accepted.

*2.4. Thus, on both counts, viz., timing and reason for delay, justification given are unconvincing and unconvincing. **Accordingly, delay is not condoned.***

06. The learned Departmental Representative argued and submitted that the appellate authority had called remand report which was submitted on 26th July, 2023, but none appeared. Accordingly, the learned CIT (A) passed an ex-parte order and rejected the appeal of the assessee. The learned Departmental Representative fully relied on the orders of the revenue authorities.
07. We have heard the rival submission and considered the documents available on record. The appeal was filed with a delay but the condonation petition and the reason of the delay is duly filed by the assessee. One of the directors went through surgery for liver transplant during filing of the appeal and accordingly, the delay was happened. In our considered view, the assessee has reasonable ground for consideration of delay. The learned CIT (A) had called for remand report, but the assessee was unable to appear for reasonable cause. The reasonable opportunity is denied for the



assessee. In our considered view, we set aside the appellate order to the file of the learned Commissioner of Income-tax (Appeals) for hearing a fresh. We direct the learned CIT (A) to condone the delay and accept the petition and directed to pass the appellate order in merit. Needless to say, that the learned CIT (A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defense shall be admitted by the learned CIT (A) and adjudicated on merits in accordance with law. We order accordingly.

08. In the result, the appeal of the assessee bearing **ITA No.1763/Mum/2024**, is allowed for statistical purposes.

Order pronounced in the open court on 16.07.2024.

Sd/-
(AMARJIT SINGH)
(ACCOUNTANT MEMBER)

Sd/-
(ANIKESH BANERJEE)
(JUDICIAL MEMBER)

Mumbai, Dated: 16. 07.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai