

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No.1861/Mum/2024  
(Assessment Year: 2021-22)

M/s. “K” Steamship Agencies Private Limited 801, C-Wing, Godrej Coliseum, Off. Somalva Hospital Road, Sion East, Mumbai-400 022	Vs.	Income Tax Officer Ward 6(3)(1) Aayakar Bhavan, Mumbai- 400 020
PAN/GIR No. AAACK 2904 Q		
<b>(Assessee)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri Y. P. Trivedi a/w Ms. Usha Dalal
<b>Respondent by</b>	:	Shri P. D. Chougule

<b>Date of Hearing</b>	:	02.07.2024
<b>Date of Pronouncement</b>	:	22.07.2024

**ORDER**

**Per Amit Shukla, J M:**

The aforesaid appeal has been filed by the assessee against the order dated 19.02.2024, passed by the Additional/Joint Commissioner of Income Tax (Appeals), Jodhpur (‘Id.CIT(A) for short) to the adjustment made u/s. 143(1) of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2021-22.

2. The assessee has raised the following grounds of appeal:

A. *The Learned CIT (A) erred in dismissing the Appeal merely relying on his powers to condone the delay when there were sufficient reasons available for condonation of delay in filing an*

appeal and also failed to ask Appellant or their representatives to show cause why delay should not be condoned. If, such an opportunity would have been given, the Appellant would have shown how because of the tragic death of the mother of the employee who is looking after the matter was responsible for the delay.

B. The CIT (A) failed to appreciate that all the disallowances/ additions made by the Assessing Officer were already considered by the Appellant while computing Income at the time of filing the tax the Income Tax Return. Any further disallowance/addition would tantamount to double taxation which is not envisaged under the Income Tax Act. The Appellant submits hereinbelow on merits that such disallowances/ additions which are already considered while computing total income by the Appellant which are not considered by the Assessing Officer.

C. The appellant objects to the total income of the current year being determined at Rs. 96,24,390/- as against returned total income of Rs. NIL and accordingly arriving a tax liability of Rs. 24,22,267/- as against returned tax liability of Rs. NIL resulting in reducing our refund to Rs. 24,030/- as against refund due of Rs. 24,46,298/-.

D. The Ld. Asst. Director of Income tax CPC, Bengaluru (herein after referred as "Assessing Officer") erred in the facts and circumstances of the case in making an addition of Rs. 96,24,290/- and raising a tax liability of Rs. 24,22,267/- and reducing refund to Rs. 24,030/- only as against refund due of Rs. 24,46,300/-.

E. The Ld. Assessing Officer erred in adding a sum of Rs. 5,000/- under section 14 A of the Act without considering the fact that said amount was disallowed by an appellant by including in a total amount of addition of Rs. 98,07,511/- under section 28 to 44 DB of the Act (sr. no. 23 of Schedule BP of ITR) and break up is provided in serial no. 4 of Statement of Facts (item no. c) filed before CIT (A).

F. The Ld. Assessing Officer erred in adding a sum of Rs. 37,333/- under section 41 of the Act without appreciating the fact that out of above addition of Rs. 35,926/ were included as an income under the account head Sundry Balance written back in schedule 3.02 Other Income. As amount is already considered as

*an income hence addition made amounts to a double addition and needs to be deleted.*

*G. Without prejudice to the above Ground No. F an addition, if at all should be restricted to Rs. 24,017/- as amount of Rs. 13,316/- (Human Power Services) was included twice in Tax Audit Report.*

*H. The Ld. Assessing Officer erred in adding a sum of Rs. 89,20,111/- under section 37 (1) of the Act without considering a fact that said amount was disallowed by an appellant by including in a total amount of addition of Rs. 98,07,511/- under section 28 to 44 DB of the Act (sr. no. 23 of Schedule BP of ITR) and break up is provided in serial no. 4 of Statement of Facts (item no. b) filed before CIT (A).*

*I. The Ld. Assessing Officer erred in adding a sum of Rs. 6,51,000/- under section 37 (1) of the Act without considering a fact that said amount was disallowed by an appellant by including in a total amount of addition of Rs. 98,07,511/- under section 28 to 44 DB of the Act (sr. no. 23 of Schedule BP of ITR) and break up is provided in serial no. 4 of Statement of Facts (item no. a) filed before CIT (A).*

*J. Without prejudice to above grounds an addition / disallowance made to Total Income should be adjusted first with the available Brought Forward of Business Loss / Unabsorbed Depreciation of earlier years instead of considering as an income under the head "Income from Business or Profession".*

*K. The Ld. Assessing Officer failed to consider or give any comment on the online reply filed by the Appellant on 23.05.2022 in which it has clearly shown that the proposed disallowance/additions were already considered by the Appellant while filing the Return which shows the total non-application of mind.*

3. Brief facts of the case are that the assessee is a private limited company and is engaged in handling vessels arranging for berthing of vessels, completion of port and customs formalities, payment of port charges, shifting of cargo and overall supervision the movement of

owner's vessel arriving at various port of India. The assessee has filed its return of income on 22.02.2022, declaring Nil income. However in an intimation u/s. 143(1) of the Act, the total income assessed/adjusted was Rs.96,24,290/-.

4. In ground no. A, the assessee has challenged that the ld. CIT (A) has erred in not condoning the delay. It has been submitted by the ld. counsel for the assessee that the intimation u/s. 143(1) of the Act was passed on 13.11.2022, whereas the appeal was filed on 18.11.2023 and on this ground, the ld. CIT (A) has treated that the appeal is not maintainable.

5. Before us, the ld. counsel submitted that the assessee has given the reasons for condonation of delay stating that the intimation u/s. 143(1) of the Act was not received on the registered email and hence, the same went unnoticed. In support, the Affidavit of Shri Sanjay Chaturdas Hariyani on behalf of the assessee company has been filed. He stated that he was the person responsible to receive email and messages, however during the period from November, 2022 to August, 2023, he was having some serious family problems relating to sickness of his mother who was suffering from cancer and who ultimately expired in the month of August, 2023. Hence, he could not check emails or messages of the Company and accordingly the intimation sent through email remained unnoticed. Looking to these

facts, we hold that there was a reasonable cause for delay in filing of the first appeal against intimation u/s. 143(1) of the Act. Accordingly, we hold that in these facts, the delay should have been condoned.

6. However, on merits of the case, though it would be proper to send the matter back to the file of the ld. CIT (A), however, looking to the smallness of the issues, we deem it fit to adjudicate all the issues, because most of the grounds require verification by the ld. A.O. as the main grievance of the assessee is that most the disallowances made has already been added by the assessee in the computation of income and therefore, it amounts to double addition.

7. On first issue, the assessee has challenged the reducing of the claim of refund to Rs.24,020/- as against the claim of refund of Rs.24,46,300/- made in the return of income. Accordingly, the ld. Assessing Officer/ Central Processing Centre (CPC) is directed to verify the claim and grant the correct quantum of refund to the assessee.

8. The second issue is that the CPC has erred in making an addition of Rs.96,24,290/- and raising the tax liability of Rs.24,22,267/- and reducing the refund due to Rs.24,030/-, as against refund due of Rs.24,46,300/-. It has been contended that the matter should be restored back to the file of the ld. A.O. for the reason that most of the additions has already been included in the income

and profit and loss account; therefore, there is a double addition. For instance, he submitted that the ld. A.O. has added an amount of Rs.5,000/- u/s. 14A of the Act on the basis of the tax audit report without appreciating that the assessee has already disallowed the above amount including the total amount of Rs.98,07,511/- u/s. 28 to 44DB of the Act. The detailed breakup of which is as under:

(Amt. in Rs.)

a.	<i>Provision for diminution in value of investment</i>	6,51,000/-
b.	<i>Loss on sale of investment</i>	89,20,111/-
c.	<i>Disallowance u/s. 14A</i>	5,000/-
d.	<i>Prior period expenses</i>	1,00,000/-
e.	<i>Depository service charges (DEMAT)</i>	1,31,400/-
		98,07,511/-

He drew our attention to the schedule where all these amounts have been added back. Accordingly, this matter is restored to the ld. A.O. to examine and verify that if all these amounts have been added back then same could not have been added back and grant appropriate relief.

9. The next issue pertains to the addition of Rs.37,333/- made u/s. 41 of the Act stating it to be a deemed income. In this regard, the ld. counsel submitted that in the tax audit report, it has been mentioned in (Sr. No. 25 of Form 3CD) about Long Pending Liability Written Back of Rs.37,110/- and same is chargeable under section 41 of the Act. The ld. Assessing Officer has added above amount without

appreciating the fact that amount of Rs.35,926/- was already included as other income in Note No.3.02 – in Annual Accounts of the assessee as Sundry Balance written back and also assessee had mentioned said amount in ITR – Part A Trading Account under the head : “Any Other Income and stated as Sundry Balance written back” – Rs.35,926/-. The assessee has also some extracted note to the financial account highlighting the amount of Rs.35,926/-. Thus, once this amount has already been adjusted, then same could not have been adjusted by CPC. Accordingly, this issue is also restored to the file of the ld. A.O. to verify and grant appropriate relief.

10. As an alternative ground, it has been submitted that an addition, if at all made, it should be restricted to Rs.24,017/- as an amount of Rs.13,316/- relating to Human Power Services which was included twice in Tax Audit Report. This issue is again remanded back to the file of the ld. A.O. to verify the same.

11. The next issue relates to an addition of Rs.89,20,111/- made u/s. 37(1) of the Act without appreciating that the said amount has already been disallowed by the assessee including in a total amount of addition of Rs.98,07,511/-. Accordingly, the ld. A.O. is directed to verify the same and grant appropriate relief ensuring that there is no double addition.

12. The next issue relates to an addition of Rs.6,51,000/-made u/s. 37(1) of the Act which again has been stated that some amount has been disallowed by the assessee. Accordingly, this issue is also restored to the file of the Id. A.O.

13. Lastly, the assessee states that if at all any addition/disallowance are made/confirmed to the total income, then the said income first should be adjusted with the brought forward of business losses/unabsorbed depreciation of the earlier years. We agree with the contention of the assessee that if at all any addition or disallowance is made then income first should be adjusted with the brought forward of business losses/unabsorbed depreciation of the earlier years. Accordingly, we direct the Id. A.O. if at all there is some disallowance/adjustment in this year, the same should be adjusted with the available brought forward business loss of the assessee. Accordingly, all the grounds raised by the assessee are remanded to the file of the Id. A.O.

14. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 22<sup>nd</sup> July, 2024.*

Sd/-  
**(Gagan Goyal)**  
**Accountant Member**

Sd/-  
**(Amit Shukla)**  
**Judicial Member**

Mumbai; Dated : 22/07/2024  
Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai