

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI NARNEDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1481/MUM/2024
(Assessment Year: 2018-19)**

Dhoot Industrial Finance Ltd,
504, Raheja Centre, Free Press Journal
Marg, Nariman Point, Mumbai – 400021.
[PAN:AAACD1836A]

..... **Appellant**

Vs

Deputy Commissioner of Income Tax,
Centralised Processing Centre, Bangalore,
Karnataka – 560500.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Nishit Gandhi
For the Respondent/Department : Shri R.R.Makwana

Date

Conclusion of hearing : 10.07.2024
Pronouncement of order : 07.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 21/02/2024, passed by the Commissioner of Income Tax, ADDL/JCIT(A)-1 Jaipur, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) dismissed the appeal preferred by the Assessee against Intimation Order, dated 31/10/2019, passed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**').
2. The appellant has raised following grounds of appeal :
 - "1. *CIT(A)*' erred in not condoning the delay in filing of the Appeal against intimation u/s.143(1) without considering the factual reasons of the case of the Appellant and against the principle of natural justice, as on merit also the addition in the

intimation u/s.143(1) was erroneous and continued in order u/s.143(3).

2. *Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld CIT(A) erred not deleting the adjustment of Rs.70,34,565/- which was made by erroneously considering the Sale consideration of Short Term Capital Gain of Rs.3,15,58,023/- as Total Capital Gain earned under the head "Capital Gain" whereas as the amount of Total Capital Gain was Rs.3,85,92,588/- (Long Term Capital Gain Rs.3,47,12,086 plus Short Term Capital Gain Rs.38,80,502) as duly disclosed under the respective heads of Capital Gain Schedule in the ITR.*
 3. *Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld CIT(A) erred not deleting adjustment of Rs.70,34,565 without considering the facts that the amount of Rs.3,85,92,588 considered as "Income/receipt credited to profit and loss account considered under other heads of income" and the amount of Capital Gain of Rs.3,85,92,588 (Long Term Capital Gain Rs.3,47,12,086 considered under the exempt income in ITR and Short Term Capital Gain Rs.38,80,502 considered under the head Capital Gain in the ITR) are same and there is no difference in both the amounts.*
 4. *The adjustment made under intimation u/s 143(1)(a) of the Income Tax Act, 1961 was factually incorrect and are not covered under the ambit of provision of section 143(1) of the Act and order passed under section is invalid and void."*
3. The relevant facts in brief are that the Appellant filed return of income for the Assessment Year 2018-19 on 26/09/2018 declaring a loss of INR 36,10,764/- under normal provisions of the Act and book profit of INR 3,16,79,249/- under Section 115JB of the Act. The return filed by the Appellant was processed and intimation under Section 143(1) of the Act was issued on 30/10/2019 whereby business income of the Appellant was increased by INR.70,34,565/- as the income of the Appellant was computed at INR.34,23,801/- as against the returned loss of INR.36,10,764/-. Being aggrieved, the Appellant preferred appeal before the CIT(A)

which was dismissed as being barred by limitation. Hence the present appeal before the Tribunal.

4. We have heard both the sides and perused the material on record.
5. The relevant facts as emerging from the record are that Appellant filed return of income for the Assessment Year 2018-2019 on 26/09/2018. Subsequently, the case of the Appellant was selected for scrutiny and notice under Section 143(2) of the Act was issued on 23/09/2019. During the pendency of the scrutiny proceedings the return of income filed by the Appellant was processed and intimation/order, dated 31/10/2019, was issued under Section 143(1) of the Act whereby the business income of the Appellant was increased by INR.70,34,565/-. Since the notice, dated 23/09/2019, was issued under Section 143(2) of the Act prior to the passing of the intimation order, dated 31/10/2019, the Appellant was under the bonafide belief that the issue would also be taken up for consideration and would be resolved in favour of the Appellant at the time of passing of the assessment order. However, the Assessment Order was passed under Section 143(3) of the Act on 02/03/2021 without making any reference to the same. Therefore, the Appellant filed appeal before the CIT(A) against the Intimation Order, dated 31/10/2019, after a delay of more than 2 years along with application seeking condonation of delay on account of aforesaid reasons. It was stated on behalf of the Appellant that the period of delay subsided with the period during which the Covid 19 Pandemic was spread across India and the period during which technical difficulties were being faced by the taxpayers while using the income tax portal. The CIT(A) was not convinced with the explanation offered by the Appellant regarding reasons for delay in filing the appeal. Therefore, the CIT(A) declined to condone the delay and dismissed the appeal.
6. Before the Tribunal the Learned Authorised Representative for the

Appellant reiterated the submissions made before the CIT(A) and submitted that the CIT(A) failed to appreciate the factual position and the submission of the Appellant while declining to condone the delay. It was submitted that the Appellant had a good case on merits as was apparent from the documents on record. The Learned Authorised Representative took us through the documents placed as part of the paper-book to substantiate his submission that the Appellant had already offered the capital gains income to tax and that the addition of INR 70,34,565/- resulted in double taxation of same income in the hands of the Appellant.

7. Per Contra, the Learned Departmental Representative supported the order passed by the CIT(A) and submitted that the Appellant had failed to provide any cogent reasons for the inordinate delay in filing the appeal or to interfere with the intimation order under Section 143(1) of the Act.
8. We have given thoughtful consideration to the rival submissions. In the case of **Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC)** the Hon'ble Supreme Court has, while dealing with the issue of condonation of delay, emphasized that substantial justice should prevail over technical considerations. Every day's delay must be explained does not mean that a pedantic approach should be taken and that the aforesaid doctrine must be applied in a rational common sense and pragmatic manner, more so in circumstances where a litigant does not stand to benefit by lodging the appeal late (as is the case in appeal before us). Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

- 7.1. In the present case the bonafides of the Appellant are not under challenge. On perusal of the Assessment Order itself it becomes clear that Intimation Order, dated 31/10/2019, was issued during the pendency of the scrutiny assessment. Thus, the expectation of the Appellant that the addition of INR 70,34,565/- made to income could be addressed while passing the assessment order cannot be said to be unreasonable. We note that the appeal before the CIT(A) was instituted on 13/08/2021. At the relevant time the nation was gripped with Covid 19 pandemic. Vide order, dated 10/01/2022, passed in Suo Moto Writ Petition (C) No. 3 of 2022, the Hon'ble Supreme Court had, inter alia, provided additional time in cases where the period of limitation expired during the specified period starting from 15/03/2020 and ending on 28/02/2022. Part of the period of delay falls within the aforesaid period, in case the same is excluded, the period of delay gets reduced partially. In our view, no benefit would have accrued to the Appellant by delaying filing of appeal before the CIT(A) against the Intimation Order, dated 31/10/2019.
- 7.2. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. On perusal of record we find that in the present case the Appellant had disclosed capital gains income in the return of income. Profits from Sale of Investments aggregating to INR 3,85,92,588/- were credited to the Profit & Loss Account for the relevant previous year. In the return of income the aforesaid account was reduced while computing the Profits & Gains of Business as the same was falling within the head Capital Gains. INR 3,47,12,066/- was claimed as exempt under Section 10(38) of the Act while INR 38,80,502/- was offered to tax as short term capital gains income in the return of income. While processing the return of income instead of reducing aggregate capital gains of

INR 3,85,92,588/- from the business income, amount of sale consideration received by the Appellant in respect of short term capital gains amounting to INR 3,15,58,023/- was reduced. As a result, the Business Income got increased by INR 70,34,565/- [INR 3,85,92,588/- Less 3,15,58,023/-] and the loss of INR 36,10,764/- [(-) 36,10,764/- add 70,34,565/-] was converted into profit of INR 34,23,801/-. The aforesaid facts are apparent on perusal of the return of income. Therefore, the addition of INR.70,34,565/- made in the intimation order passed under Section 143(1) of the Act cannot be sustained. Considering overall facts and circumstance of the case, we are of the view that the delay in filing the appeal before the CIT(A) should have been condoned. In our view, restoring the issue back to the file of CIT(A) for adjudication on merits would be an empty formality. Accordingly, keeping in view the cause of substantial justice, the order, dated 21/02/2024, passed by the CIT(A) is set aside and the addition of INR 70,34,565/- is deleted. Thus Grounds No.1 to 4 raised by the Appellant are allowed.

9. In result, present Appeal preferred by the Assessee is allowed.

Order pronounced on 07.10.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 07.10.2024
MP, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai