

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3154/Del/2024, A.Y.2015-16)

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| VSR Infratech Private Limited A-22, Hill View apartments, Vasant Vihar, Delhi PAN: AADCV4234B (Appellant) | Vs. | Commissioner of Income Tax (Appeals) New Delhi (Respondent) |
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| Appellant by | Sh. Abhishek Goel, CA |
| Respondent by | Sh. Amit Katoch, Sr. DR |

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| Date of Hearing | 23/09/2024 |
| Date of Pronouncement | 23/09/2024 |

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2015-16 filed by the assessee is directed against the order dated 15.06.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [hereinafter, the 'CIT(A)'].

2. Following grounds are raised in this appeal: -

"1. Upon due Consideration of facts and in law the Ld. CIT(A) was not Justified in disposing off the appeal without serving any Physical Copy of Notice upon the "Appellant "and also without adjudicating the Merits of the Case.

2. *The Ld. CIT(A) has erred in confirming the addition made by the assessing officer law the total income of appellant at INR 3,19,87,720/- against returned income of INR 12,114/-under the facts and circumstances of the case.*
 3. *The Ld. CIT (A) has erred in confirming an addition for commitment charges amounting to INR 3,19,87,720/- alleging that the treatment for commitment charges is in contrary to the method of revenue recognition under the facts and circumstances of the case.*
 4. *The Ld.CIT(A) failed to appreciate the contention of Appellant by confirming the treating of commitment charges as "borrowing cost" and adding in the cost of construction of the projects undertaken.*
 5. *The Ld. CIT(A) has erred in providing the benefit of brought forward losses amounting to INR 1,31,47,983 had not been given effect to in the order, which were duly claimed in the Income tax return filed for AY 2015-16 on 30.11.2015.*
 6. *The appellant craves leave to add, amend, alter or omit any of the above grounds of appeal as the circumstances may warrant. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice."*
3. The relevant facts giving rise to this appeal are that the appellant/assessee, engaged in the business of property dealing and construction of the residential, commercial complex etc., filed its Income Tax Return (hereinafter 'TTR') on 30.11.2015 declaring income of Rs.12,114/-. The case was picked up for scrutiny. The consequential assessment of the relevant year was completed under section 143(3) of the Income Tax Act, 1961 (hereinafter, the 'Act') wherein the Assessing Officer (hereinafter, the 'AO') disallowed commitment charges of Rs.3,19,87,720/- and disallowed set off of brought forward losses of Rs.1,31,47,983/-. Aggrieved, the

appellant/assessee filed appeal before the Ld. CIT(A), who dismissed the appeal for non-prosecution and also on merit. But the Ld. CIT(A) had not given any finding on the ground relating to the disallowance of set off of brought forward losses of Rs.1,31,47,983/-. Further, he has not given reasoning and justification while confirming the disallowance of commitment charges of Rs.3,19,87,720/- though he is duty bound to do so.

4. At the outset, the Ld. Authorized Representative (hereinafter, the 'AR') prayed for condonation of delay on the reasoning that the Ld. CIT(A) failed to serve any notice in physical form and the appellant/assessee was not acquainted with the income tax portal; hence, it failed to take cognizance of the notice and appellate order. Therefore, this appeal was filed after the lapse of six months. The delay condonation application was filed along with the appeal memo in Form No. 36. The Ld. AR prayed for condonation of the delay. The Ld. AR, placing emphasis on the decision of the Co-ordinate Bench in the case of Jitender Kumar, ITA No. 8568/Del/2023, prayed for condonation of delay as the appellant/assessee had not derived any benefit by filing the appeal after due date. For deciding the case on merit, the Ld. AR prayed for remitting the matter back to the AO on the reasoning that the appellate order was passed summarily on ex-parte basis.

5. The Ld. Sr. Departmental Representative (hereinafter, the 'Sr. DR') with the help of facts mentioned in the appellate order submitted that reasonable opportunities of being heard were provided to the

appellant/assessee by the Ld. CIT(A) but the appellant/assessee did not ensure compliance. Hence, he prayed for upholding of orders of the lower authorities. Further, the Ld. Sr. DR submitted that the Bench should decide the issue of condonation of delay on merit of the case keeping in view the fact of the case.

5.1 The Ld. Sr. DR submitted that the Ld. CIT(A) has confirmed disallowance of commitment charges on the reasoning that the expenditure under this head has to allowed in tune with the apportioned project cost vis-à-vis in the revenue recognition as per the accounting standard; i.e.project completion method, followed by the appellant/assessee. The AO has done working of the same in the assessment order. The appellant/assessee's claim in this regard was not justified as highlighted by the AO. He prayed that the Ld. CIT(A)'s order should be read along with the assessment order for proper appreciation of the case.

6. We have heard both the parties and have perused the material available on record. There is no dispute and is an admitted fact that there has been a delay in filing the present appeal by six months. There is also no dispute that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation, where it is satisfied that there exists a sufficient cause on the part of the assessee for not presenting the appeal within the prescribed time. The explanation of the assessee therefore, becomes relevant to determine whether the same reflects sufficient and

reasonable cause on its part in not presenting the present appeal within the prescribed time. In the instant case, the CIT(A) has passed ex-parte order.

7. In case of Collector, Land Acquisition vs MST Katiji (Supra), the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. 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. Another principle laid down by the Hon'ble Supreme Court is that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

8. In the instant case, applying the same principles, we find that there is negligence on the part of the appellant/assessee but we do not find any

malafide intension on the part of the assessee in delayed filing of this appeal as it does not stand to benefit by resorting to such delay more so considering the fact of the case. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay in filing the present appeal as held by the Hon'ble Supreme Court where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred.

9. In light of aforesaid discussions, in exercise of powers under section 253(5) of the Act, we hereby condone the delay in filing the present appeal as we are satisfied that there was sufficient cause for not presenting the appeal within the prescribed time and the appeal is hereby admitted and is being decided accordingly.

10. The Ld. CIT(A) is duty-bound to dispose of the appeal through a speaking order on merits on all the points of determination including each ground of appeal. However, the perusal pf the impugned order shows that the same has been summarily decided and ground relating tothe disallowance of set off of brought forward losses of Rs.1,31,47,983/- has not been touched upon at all. The Ld. CIT(A) has not given any reasoning and justification while confirming the disallowance of commitment charges of Rs.3,19,87,720/-. Without offering any comment on merit of the case and considering the facts of the case in entirety, we deem it fit to set aside the impugned order and remit the issues of disallowance of

commitment charges of Rs.3,19,87,720/- and disallowance of set off of brought forward losses of Rs.1,31,47,983/- to the file of the CIT(A) with direction to decide these issues on merit with speaking order. The appellant- assessee should ensure compliances during the set-aside proceeding before the CIT(A).

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

Order pronounced in the open Court on 23rd September, 2024

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 23/09/2024

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)m
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI