

**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.3153/Del/2024, A.Y.2014-15

VSR Infratech Private Limited A-22, Hill View apartments, Vasant Vihar, Delhi PAN: AADCV4234B	Vs.	Commissioner of Income Tax (Appeals) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh.Abhishek Goel, CA
Respondent by	Sh. Amit Katoch, Sr. DR

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') 2014-15 filed by the assessee is directed against the order dated 24.01.2019 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. *That Fact of Appeal order passed by CIT (Appeals) is not in proper format and the appeal Order shows on portal is unsigned which brings reliability issues to the Appellant.*
3. *The Ld. CIT(A) erred in law and in the facts & circumstances of the case by affirming the assessment order dated 29.12.2016 under section 143(3) of the Act and assessing the appellant at income of Rs. 1,56,80,642 and thereby raising the demand of Rs, 63,26,750.*
4. *The Ld. CIT (A) has erred in law and on facts of the case in contending the External Development Charges ('EDC')/Internal Development Charges ('IDC') charges as expense covered u/s 43B of the Act.*
5. *Without prejudice to the above, the Ld. AO has erred in law and on facts of the case by considering the payments made towards EDC/IDC charges only up to March 31, 2014 and disregarding the provisions of the first proviso to Section 43B of the Act which prescribe that all payments made up to the due date of filing of return as prescribed under Section 139(1) shall be considered.*
6. *The Ld. CIT (A) has erred in law and on facts in making an addition of Rs.1,30,53,662, on account of EDC/IDC charges paid to Haryana Urban Development Authority ('HUDA'), u/s 43B of the Act by claiming that payment of Rs.6,11,32,754 has been made whereas actual payment made is Rs.11,07,62,225/-.*
7. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in initiating penalty proceedings under section 271(1)(c) of the Act on the additions made in the assessment order.*
8. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in imposing interest u/s 234A and 234B of the Act on the above additions made in the assessment order.*
9. *The appellant craves leave to add, amend, alter or omit any of the above grounds of appeal as the circumstances may warrant.”*

2.1 In nutshell, the sole issue for determination, other than the interest charged and initiation of penalty under the Income Tax Act (hereinafter, the 'Act'), which are consequential and premature, before us is that

whether the disallowance of payable EDC/IDC charges of Rs.1,30,53,662/- to Haryana Urban Development Authority ('HUDA') is justified under section 43B of the Income Tax Act, 1961 (hereinafter, the 'Act').

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, the 'ITR') on 23rd July, 2015 declaring income of Rs.22,04,480/-. The case was picked up for scrutiny. The consequential assessment of the relevant year completed at income of Rs.1,56,80,642/- after making following disallowances/additions as under:-

- i. Disallowance on short payment of EDC to HUDA under section 43B of the Act: Rs.1,30,53,662/-.
- ii. Disallowance of Fee paid to ROC Rs. 4,22,500/-.

Aggrieved, the appellant/assessee filed appeal before the Ld. CIT(A) challenging the disallowance of EDC Charges Rs.1,30,53,662/- only. The Ld. CIT(A) dismissed the appeal ex-parte.

4. At the outset, the Ld. Authorised 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 5 & 1/2 years. 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 Coordinate 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 both the assessment and appellate orders were passed summarily on ex-parte basis.

4.1 The Ld. AR contended that the EDC charges disallowed under section 43B of the Act on the reasoning that this expenditure was in penal nature; where the EDC charges was nothing but external development expenses charged by Haryana Development Authority (HUDA). In support of the submission, the Ld. AR placed reliance on following decisions:

- i. Mcdowell & Co. Ltd., Civil Appeal No. 2939 of 2006 dated 8th May, 2009 (SC)
- ii. M/s. Tamil Nadu Minerals Ltd., Appeal No. 1806 of 2008, dated 22.04.2019 (Madras High Court)

iii. Vipul Ltd., ITA no. 4866/Del/2019, dated 29.09.2022 in the ITAT (Delhi)

iv. Navi Mumbai SEZ (P.) Ltd., [2015] 54 taxmann.com 259 (Mumbai-Trib.)

5. The Ld. Sr. Departmental Representative (hereinafter, the 'Sr. DR') with the help of facts mentioned in the assessment order and appellate order submitted that reasonable opportunities of being heard were provided to the appellant/assessee by the AO and the Ld. CIT(A) but the appellant/assessee tactfully ensured noncompliance to avoid the proper investigations. 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 that the CIT(A) had also sent notices through the speed post also as detailed in the impugned order; hence, the Ld. Sr. DR categorically submitted that the Ld. AR's claim of non-service of appellate notice in physical form was not justified.

6. We have heard the rival contentions 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 5 & 1/2 years. 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 the present appeal as he 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 and 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. 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 issue of disallowance of EDC charges back to the file of the CIT(A) with direction to decide the appeal on merit. The appellant-assessee should ensure compliances during the set-aside proceeding before the CIT(A).

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

Order pronounced in 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)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI