

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 964/Kol/2024
Assessment Year: 2012-13

M/s Deepmala Vyapaar Pvt. Ltd (successor of Harshmukhi Vyapaar Pvt. Ltd.) (PAN: AABCD 9197 P)	Vs.	ITO, Ward-5(4), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.10.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	20.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri Subhendu Datta, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 30.08.2023.

2. At the outset, we observe that there is a delay of 185 days in filing the appeal and the assessee has also filed condonation application along with Affidavit of the Director of the assessee company.

3. After hearing the rival contentions and perusing the condonation petition along with Affidavit, we note that the delay in filing the appeal has occurred due to prolonged illness of Mr. Gopal Kedia who was looking after the tax matter of the assessee and finally expired on 21.10.2023. Thereafter the assessee came to know only in the month of March when the Departments started for payment of outstanding demand. Thereafter steps were taken to file the appeal immediately and was filed accordingly with a delay of 186 days. We note that the delay in filing the appeal is not attributable to the assessee nor any benefit is going to be accrued in favour of the assessee with the delayed filing of appeal. In our opinion, the delay is for bonafide and genuine reasons and is hereby condoned by relying of the decision of Hon'ble Supreme Court in the case of Mst. Katiji & Ors. reported in (1987) 2 SCC 107 (SC). At the outset, the Id. Counsel for the assessee stated before the Bench that the addition was made by the AO on account of fact that summon issued u/s 131 of the Act to the Director of the subscriber companies were not complied with and therefore the necessary verification of Rs. 7,85,55,000/- raised by way of share capital/ share application money could not be done. According to AO, the identities and creditworthiness of the subscribers and genuineness of the transactions remained unverified. The Ld. Counsel therefore submitted that the assessee may be given one more opportunity to comply with the summon before the AO by restoring the appeal to the file of the AO to which the Ld. D.R did not object. Accordingly, we restore the issue back to the file of AO with the direction to decide the same de novo after issuing summon u/s 131 to all the parties and the assessee is also directed to co-operate and produce the Principal officers of all the subscriber companies for examination as undertaken before us by the counsel for the assessee.

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

Order is pronounced in the open court on 20th November, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)
Vice-President/उपाध्यक्ष

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 20th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Deepmala Vyapaar Pvt. Ltd., (successor to Harshmukhi Vyapaar pvt. Ltd.) 40/3, Strand Road, 5th Floor, Kolkata-700001
2. Respondent – ITO, Ward-5(4), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata