

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH**

**HEARING THROUGH: PHYSICAL MODE**

**श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य**  
**BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM**

आयकर अपील सं. / ITA NO. 91/Chd/2024  
निर्धारण वर्ष / Assessment Year : 2015-16

Markanda Oil Store M/s Markanda Oil Store Petrol Pump, Bararara Road Shahabad, Markanda, Haryana-136135	बनाम	The Addl. CIT Kurukshetra
स्थायी लेखा सं. / PAN NO: AADFM4234D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None  
राजस्व की ओर से/ Revenue by : Ms. Tarundeep Kaur, Addl. CIT, Sr. DR  
सुनवाई की तारीख/Date of Hearing : 15/10/2024  
उद्घोषणा की तारीख/Date of Pronouncement : 28/11/2024

### **आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/ NFAC, Delhi dt. 28/11/2023 pertaining to Assessment Year 2015-16 wherein the grounds of appeal relates to sustenance of disallowance of salary paid to the working partners amounting to Rs. 275,000/- as well as disallowance of interest on unsecured loans amounting to Rs. 2,49,460/- as well as the fact that the Ld. CIT(A) has not condoned the delay and the appeal has been dismissed at the very threshold without deciding the matter on the merits of the case.

2. Briefly the facts of the case are that the assessment order was passed in this case under section 143(3) r.w.s. 263 r.w.s 144B of the Act, dt. 25/01/2022. During the course of assessment proceedings, the AO observed that the assessee has paid interest amounting to Rs. 8,31,518/- without deduction of TDS and in response, the assessee submitted that it has deposited copy of Form No. 15G/15H required from the persons to whom the interest was paid and the same was deposited in the office of CIT,

Chandigarh through ITO(TDS), Karnal on 07/04/2015 and copy of the acknowledgement of the deposit was submitted as part of the assessee's submission. The AO however stated that the assessee has only submitted a letter of acknowledgement with ITO (TDS) and it has not submitted the self declaration in Form 15G/15H from the deductees and in the letter so submitted dt. 07/04/2015, it did not mention even the name of the persons for whom 15G form have been submitted and thereafter, the AO held that the assessee is liable for action under section 40(a)(i) of the Act and has disallowed 30% of the interest expenses of Rs. 8,31,518/- amounting to Rs. 2,49,460/-.

3. Regarding payment of salary of Rs. 2,75,000/- paid to its working partner, the AO referred to the copy of the partnership deed and stated that on examination of the partnership deed, it is observed that as per Clause 7 of the said deed, both working partners will be paid remuneration as per the provision of Section 40(b) of the Act. However CBDT circular No. 739 dt. 25/03/1996 clearly laid down that from A.Y. 1996-97 onwards, no deduction 40(a)(v) will be admissible unless the partnership deed either specifies the amount or remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration and given that no such provision was mentioned in the partnership deed, the salary paid to the working partners amounting to Rs. 2,75,000/- was disallowed.

4. The assessee thereafter carried the matter in appeal before the Ld. CIT(A) and the same was dismissed on account of delay in filing the appeal. Against the said findings, the assessee is in appeal before us.

5. None appeared on behalf of the assessee nor any adjournment application was filed and it was decided that no useful purpose would be served in adjourning the matter any further and it was decided to hear the Id DR and decide based on material available on record.

6. During the course of hearing, the Ld. DR submitted that there was substantial delay of 265 days in filing the appeal before the Ld. CIT(A) and there was clear negligence on the part of the assessee in pursuing the present matter before the Ld CIT(A) and therefore the delay was rightly not condoned by the Ld. CIT(A) and the appeal of the assessee was dismissed. On merits of the case, the Ld DR has relied on the order of the AO.

7. On perusal of the impugned order, it is noted that the assessee has submitted before the Ld CIT(A) that the delay in filing the appeal has happened on account of lack of professional diligence and non-communication on the part of its Counsel and for such an action, the assessee should not be penalised. In this regard, it was further submitted that all the communication by the Revenue were received on the email id of Mr. Kamal Sharma who was its earlier tax counsel and who has not conveyed the same to the assessee nor has he taken any further steps in terms of filing the present appeal. Later on, when the assessee came to know about the passing of the assessment order, raising of the tax demand and the recovery notice were issued by the AO, the assessee approach another counsel Mr. Vipin Sharma and basis his advice, the assessee filed the appeal. It was submitted that there was no intention of the assessee to evade the law and the assessee is very much interested in resolution of the present case which would lead to undue hardship due to a tax demand raised by the AO. It was accordingly submitted that the assessee had a reasonable cause for the delay in filing the appeal before the Ld. CIT(A). However, we find that the Ld. CIT(A) has not condoned the said delay and stated that the assessee has not submitted any substantive reason for delay in filing of the appeal and the appeal of the assessee was dismissed on account of delayed filing.

8. We have given a careful consideration to the explanation so submitted by the assessee before the Ld CIT(A) and find that the Ld CIT(A) has not commented upon lack of professional diligence on the part of its earlier tax

counsel who was the sole point of contact with the Revenue and who has failed to communicate the receipt of the assessment order to the assessee and as soon as the assessee came to know of the assessment order, it took necessary steps in terms of hiring a fresh counsel and thereafter, basis his advice, filed the appeal before the Id CIT(A).

9. We find that the explanation so submitted by the assessee deserve to be accepted and the delay in filing the appeal before the Id CIT(A) is hereby condoned and the matter remitted to the file of the Id CIT(A) to decide the same on merits after providing reasonable opportunity to the assessee.

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

Order pronounced in the open Court on 28/11/2024

Sd/-

**परेश म. जोशी**  
(PARESH M. JOSHI)  
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

**विक्रम सिंह यादव**  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

**AG**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar