

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.498/Nag./2024
(Assessment Year : 2013-14)

ITA no.517/Nag./2024
(Assessment Year : 2013-14)

ITA no.500/Nag./2024
(Assessment Year : 2013-14)

ITA no.501/Nag./2024
(Assessment Year : 2014-15)

ITA no.558/Nag./2024
(Assessment Year : 2014-15)

ITA no.559/Nag./2024
(Assessment Year : 2014-15)

ITA no.560/Nag./2024
(Assessment Year : 2014-15)

Aditi Express Cargo India Pvt. Ltd.
Through its erstwhile Director
Shri Prashant Natwarlal Lakhani
B-3, Saptak Plaza, Shankar Nagar Square
Nagpur 440 010 PAN - AAECA5866B

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-3, Nagpur

..... Respondent

Assessee by : S/Shri Nitin Gulati a/w Pankaj Kapoor
Revenue by : Shri Abhay Y. Marathe
Shri Sandipkumar Salunke

Date of Hearing - 02/12/2024

Date of Order - 06/12/2024

ORDER

PER K.M. ROY, A.M.

In this batch of 7 appeal, the assessee has filed multiple appeals in assessment year 2013-14 and 2014-15, challenging the order passed by the first appellate authority, the details of which are tabulated below:-

Sr. no.	Appeal Number and Assessment Year	Date of order passed by the first appellate authority	Section under which first appellate authority has passed the Order	First Appellate Authority
1.	ITA no.498/Nag./2024 A.Y. 2013-14 by Assessee	31/07/2024	147 r/w 144	National Faceless Appeal Centre, Delhi
2.	ITA no.517/Nag./2024 A.Y. 2013-14 by Assessee	31/07/2024	271(1)(c)	National Faceless Appeal Centre, Delhi
3.	ITA no.500/Nag./2024 A.Y. 2013-14 by Assessee	31/07/2024	271(1)(b)	National Faceless Appeal Centre, Delhi
4.	ITA no.501/Nag./2024 A.Y. 2014-15 by Assessee	31/07/2024	271(1)(b)	National Faceless Appeal Centre, Delhi
5.	ITA no.558/Nag./2024 A.Y. 2014-15 by Assessee	23/09/2024	147 r/w 144	National Faceless Appeal Centre, Delhi
6.	ITA no.559/Nag./2024 A.Y. 2014-15 by Assessee	23/09/2024	271(1)(b)	National Faceless Appeal Centre, Delhi
7.	ITA no.560/Nag./2024 A.Y. 2014-15 by Assessee	23/09/2024	271(1)(c)	National Faceless Appeal Centre, Delhi

We take up appeal in ITA no.498/Nag./2024, for the assessment year 2013-14, as the lead case, wherein the assessee has raised following grounds:-

"1. The Learned Commissioner of Appeals disposed of the appeal after the first hearing, without granting the assessee any further opportunity for a personal hearing. A notice under Section 250 dated 26.07.2024 was issued but not received by the assessee, as it was sent on short notice during the peak return filing period, thus depriving the assessee of a chance to present their case.

2. Invalid Reassessment Proceedings:

The reassessment order dated 26.03.2022, passed under Sections 147/144, is invalid due to the non-service of notice under Section 148. The notice was returned unserved, and no further attempts were made to serve the assessee via alternate modes, including affixture.

3. Lack of Tangible Material for Reassessment:

The reassessment was initiated without any tangible material or concrete evidence of income escaping assessment. The reassessment appears to be based on mere assumptions without establishing a live link between the information and the alleged income escapement.

4. Ex-Parte Assessment without Adequate Opportunity:

The assessment was completed ex-parte due to non-compliance with notices under Section 142(1), which were not properly served. The assessee was not given sufficient opportunity to respond, resulting in a one-sided assessment.

5. Appellant company was ceased to exist:

Appellant failed to file income tax return due to sudden shut down of operations otherwise Appellant has no liability to pay as Taxes have been paid in Excess. If these Reassessment notices would have been served to him then this situation would not have arised..

6. No Live Link:

The Assessing officer has failed to establish live link with the information and tangible material and have also failed to establish the role of the Appellant herein with the alleged parties mentioned in the SCN and subsequently they have passed order u/s 147.

7. Penalties Imposed Without Just Cause:

Penalty proceedings initiated under Sections 271(1)(b), 271(1)(c), and 271F are unjustified, as the failure to file the return was due to operational shutdown and not due to any intention to evade tax. Moreover, taxes had already been paid in excess.

8. Procedural Lapses in Appeal Proceedings:

The Learned Commissioner of Appeals failed to give proper consideration to the condonation of delay and the reasons for the late filing of the appeal. No opportunity was provided to explain the delay adequately.

The appellant reserves the right to add, delete, or modify any grounds during the course of the appeal."

2. The factual matrix of the case are that, the assessee has deposited cash of ₹ 4,50,000, in its account maintained with HDFC Bank Limited, Nagpur. The Assessing Officer noticed that during the assessee company had received

gross contract amount of ₹ 8,63,10,785, from different parties besides interest of ₹ 2,13,127. Since no return of income has been filed for the relevant assessment year 2013-14, the income derived from the above sources was found to have been escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 (*"the Act"*). Therefore, the case was reopened under section 147 of the Act. The Assessing Officer issued several notices requesting the assessee to substantiate its case by filing relevant documents / information, however, the assessee chose not respond to the notices issued the Assessing Officer. Due to lackadaisical and non-compliance approaches of the assessee, the Assessing Officer being left with no alternative, thus the Assessing Officer safely concluded that the assessee no objection for addition of the amount of ₹ 1,75,54,332, which was added to the total income of the assessee on account of undisclosed income from contract business and charged to tax accordingly.

3. Insofar as the disallowance under section 43B of the Act is concerned, the Assessing Officer noticed that in the statement of particulars furnished in Form no.3CD, which has been submitted electronically on 30/09/2013 by the assessee, it was found that at Clause 21(i)(B)(b), the auditor has reported that ESIC of ₹ 5,75,017, Professional Tax of ₹ 3,61,414, and Provident Fund of ₹ 21,04,804, was standing payable as on the date of audit. Therefore, in the questionnaire issued under section 142(1) dated 16/12/2021, the Assessing Officer sought explanation from the assessee and requested to file relevant details, documents and information to substantiate its case. However, the assessee failed to respond and/or even failed to comply with the show cause notice. Hence, the Assessing Officer made addition of ₹ 5,75,017, on account

of non-payment of ESIC contribution and ₹ 21,04,804, on account of non-payment of Provident Fund contribution. Similarly, outstanding payment of ₹ 3,61,414, on account of Professional Tax. The total disallowance made under section 43B(a) of the Act by the Assessing Officer comes to ₹ 30,41,235, which was also added back to the income of the assessee and tax accordingly.

4. On appeal, the learned CIT(A) observed that there is a substantial delay of 705 days in filing the appeal before the learned CIT(A) and the assessee failed to explain such delay. Since the assessee did not discharge its onus by providing sufficient cause within the meaning of section 249 of the Act, the learned CIT(A) dismissed the appeal without going into the merits of the case, as the appeal is treated to be filed belatedly under section 249(3) of the Act. The assessee being dissatisfied filed appeal before the Tribunal.

5. Before us, the learned Authorised Representative appearing for the assessee vehemently submitted that the order passed under section 147 r/w section 144 of the Act, due to non-service of notice under section 148 of the Act is not valid and unsustainable. He submitted a voluminous Paper Book containing following documents which are placed on record:-

<i>Sr. no.</i>	<i>Document Description</i>
1.	<i>Notice under section 148 for A.Y. 2013-14</i>
2.	<i>Notice under section 148 for A.Y. 2014-15</i>
3.	<i>Intimation under section 143(1) for A.Y. 2012-13</i>
4.	<i>Intimation under section 143(1) for A.Y. 2017-18</i>
5.	<i>HDFC Bank Statement (Overview)</i>
6.	<i>Somalwada Sale Deed</i>
7.	<i>ITAT Judgment: CIT (Central)-1 v/s Chetan Gupta</i>

8.	<i>ITAT Judgment: Mandeep Mali v/s ACIT</i>
9.	<i>ITAT Judgment: Girirajkripa Developers v/s ITO</i>
10.	<i>DHS Judgment: CIT v/s Chetan Gupta</i>
11.	<i>Notice under section 148 for A.Y. 2013-14</i>
12.	<i>Notice under section 148 for A.Y. 2014-15</i>

6. Per-contra, the learned Departmental Representative appearing for the Revenue pointed out that the assessee is recalcitrant, non-filer, non-cooperative and is flippant in attitude. Moreover, there is no reason for the huge delay of 705 days. Rebutting the same, the learned Authorised Representative immediately drew our attention to the affidavit dated 29/11/2024, duly notarised, the contents of which, in verbatim, are as under:-

"BEFORE THE INCOME TAX APPELLATE TRIBUNAL,

NAGPUR BENCH

IN THE MATTER OF:

Aditi Express Cargo India Private Limited (PAN: AAECA5866B)

VS.

DCIT, ACIT Circle-3, Nagpur

Appeal Numbers: ITA No. 498/NAG/2024 for A.Y: 2013-14 ITA No. 500/NAG/2024 for A.Y: 2013-14 ITA No. 517/NAG/2024 for A.Y: 2013-14 ITA No. 501/NAG/2024 for A.Y: 2014-15 ITA No. 558/NAG/2024 for A.Y: 2014-15 ITA No. 559/NAG/2024 for A.Y: 2014-15 ITA No. 560/NAG/2024 for A.Y: 2014-15

AFFIDAVIT ON BEHALF OF APPELLANT

I, Prashant N. Lakhani, son of Late Shri Natwar Lal Lakhani, aged [Your Age], residing at [Your Full Address], do hereby solemnly affirm and state as follows: 1. That I am the erstwhile Director of Aditi Express Cargo India Private Limited and am duly authorized to file affidavits and make submissions on behalf of the appellant in connection with the appeals filed before the Hon'ble Income Tax Appellate Tribunal, Nagpur Bench.

2. That I am making this affidavit in connection with the appeals against the orders passed under Section 147 of the Income Tax Act, 1961, and penalty orders under Sections 271(1)(c) and 271(1)(b) for the Assessment Years 2013-14 and 2014-15.

3. That the assessment notices under section 148 of the Income Tax Act were never served upon the appellant, as they were sent to an incorrect address. Further, the notices were neither received through email nor affixed at the last known place of business, as required under the law.

4. That I became aware of the demand raised by the department only in 2024 when I, as the erstwhile director, decided to start a new business venture. I immediately made efforts to obtain a copy of the said orders. However, the concerned officer initially refused to provide copies, further delaying my ability to initiate appropriate action.

5. That the appeals against the orders were filed before the Hon'ble Tribunal on September 13, 2024, and October 22, 2024, but were

6. That due to the non-receipt of the orders and the refusal of the officer to provide copies in a timely manner, the appeals were delayed unintentionally and solely due to circumstances beyond my control.

7. That I respectfully submit that the delay in filing the appeals was neither deliberate nor intentional but was the result of bona fide and unavoidable circumstances. 8. That I humbly request the Hon'ble Tribunal to condone the delay in filing the appeals and to hear the matters on their merits in the interest of justice.

8. That I humbly request the Hon'ble Tribunal to condone the delay in filing Appeals and to hear the matter on merits in the interest of justice. The delay occurred was not intentional and therefore same may be condone in the interest of justice. It is submitted that if the delay is condone and matter is heard on merits no prejudice will cost to anybody but if delay is not condone then the appellant will suffer irreparable loss which can not be compensated in any term.

Hence this Affidavit,"

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. It is apparent to us that without expressing any opinion on the merits of the case, it is a matter on record that the learned CIT(A) was not confronted with the contents of the Affidavit. Since he enjoys an unbridled discretion as to the condonation of delay in all fairness, it is deemed expedient to set aside the matter back the learned CIT(A) to take a call in this matter and to re-

adjudicate the matter on merits after providing reasonable opportunity of being heard. We make it clear that all the issues are wide open for pleadings and submissions uninfluenced by past events. The same directions shall hold in the appeal being ITA no.558/Nag./2024, for the assessment year 2014–15.

8. Rest five appeals being ITA no.517/Nag./2024 (A.Y. 2013–14), ITA no.500/Nag./2024 (A.Y. 2013–14), ITA no.501/Nag./2024 (A.Y. 2014–15 and ITA no.559/Nag./2024 (A.Y. 2014–15) and ITA no.560/Nag./2024 (A.Y. 2014–15) are concomitant penalty appeals, which will also bear the same fate.

9. In the result, all the captioned seven appeal are allowed for statistical purposes.

Order pronounced in the open Court on 06/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 06/12/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur