

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI SONJO SARMA, JM**

**ITA No.1125/KOL/2024
(Assessment Year: 2013-14)**

North India Wires Limited
12, Regent House Govt. Place
East, Kolkata-700069,
West Bengal

(Appellant)

Vs.

DCIT, Circle 3(1), Kolkata
Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata-700069,
West Bengal

(Respondent)

PAN No. AABCN0120A

Assessee by : Shri Ashish Rustogi, AR
Revenue by : Shri Abhijit Adhikari, DR

Date of hearing: 27.01.2025
Date of pronouncement : 04.03.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 17.07.2023 for the AY 2013-14.

02. At the outset, we note that there is a delay in filing of appeal by 244 days. Explaining the delay, the Counsel of the assessee stated that the registered mail id of the assessee got corrupted and did not function properly and therefore the notices could not be accessed and complied with. The order passed by the Id. CIT(A) was only became known to the assessee when penalty notice u/s 271(1)(c) of the Act was received by the assessee. Thereafter the appeal was got prepared and filed before the Tribunal with a delay of 244 days. The Id. Counsel



for the assessee stated that the delay is for genuine and bonafide reasons and assessee has not been benefited in any manner from the delayed filing in appeal before the Tribunal. Therefore, in the interest of justice and fair play, the delay in filing the appeal may be condoned and appeal may be admitted for adjudication.

03. The Id. DR on the other hand submitted that the assessee has not explained the reasons for delay to be sufficient and bonafide and therefore, the appeal may be dismissed.
04. Having taken into account the affidavit filed by the assessee and reasons explained therein, we are of the view that the delay is for bonafide and genuine reasons and the assessee can not be denied justice on the ground that the appeal being filed late due to technical glitches. Therefore, we are inclined to condone the delay and admit the appeal for adjudication.
05. The Id. Counsel for the assessee has challenged the order of the Id. CIT(A) on legal issue as well as on merit. So far as the legal issue is concerned, the assessee has challenged the reopening u/s 147 of the Act and as far as merit of the case is concerned, the assessee assailed the order of Id. CIT(A) for sustaining the addition of Rs.19 lacs as made by the Id. AO u/s 68 of the Act.
06. The facts in brief are that the return was filed on 29.03.2013, declaring total income of Rs.3,04,06,700/-. The assessee is engaged in the business of manufacturing LPG Cylinders. The case of the assessee was selected for scrutiny and assessment was framed vide order dated 23.12.2015 u/s 143(3) of the Act, assessing the total income of ₹3,32,92,260/-. The case of the assessee was reopened u/s 147 of the Act, by issuing notice u/s 148 of the Act dated 05.04.2018,



which was complied with by the assessee by filing the return of income on 24.11.2018 with returned income of ₹3,04,06,700/-. Thereafter the statutory notices were issued along with questionnaire, which were replied by the assessee. The Assessing Officer finally made the addition of ₹19 lacs on account of loan creditors which according to the Id. AO remained unexplained in the assessment framed u/s 147/143(3) dated 06.12.2018.

07. In the appellate proceedings, before the Id. CIT (A) the appeal was decided ex-parte in limine when the assessee failed to respond on three occasions when the assessee was provided opportunity of hearing.
08. Now, the Id. Counsel for the assessee has raised a legal issue before us, challenging the reopening of assessment u/s 148 of the Act. The Id. AR stated that impugned assessment year is A.Y. 2013-14 and notice u/s 148 of the Act was dated 04.04.2018, apparently, the reopening of assessment was made four years after the end of the relevant assessment year. The Id. AR referred to the reasons recorded a copy of which is available in the paper book and submitted that issue which was subject matter of the reasons recorded i.e. the assessee being beneficiary of unsecured loans of ₹19 lacs was also the issue which was raised in the original assessment proceeding and all the information/ details were duly furnished before the Id. AO and even the AO issued notice u/s 133(6) of the Act, dated 01.10.2015 to the lender M/s Tirumala Suppliers Pvt. Ltd. calling for the details of transactions, nature of transaction and various other details including the copies of ledger account, acknowledgement of ITR, balance sheet, P & L account, whether the loan was given through banking channel, which was replied by the said party vide letter dated 19.10.2015. The

Id. AR also claimed before us that the said loan was repaid in the F.Y. 2013-14 i.e. A.Y. 2014-15. The Id. AR therefore, stated that the Id. AO has not recorded in the reasons recorded that how the said amount of unsecured loans has escaped assessment on account of failure of the assessee to disclose the information and details during the course of assessment proceedings. Nowhere the Id. AO has mentioned that there was any failure on the part of the assessee to disclose any material fact which has ultimately led to the escapement of income. Ld. AR therefore, submitted that the re-opening on the basis of said reasons is nullity and bad in the eyes of law. In defence of his argument, Ld. A/R relied on the decision of Hon'ble Apex Court in the case of *ACIT Vs. CEAT Ltd.* reported in [2022] 449 ITR 171 (SC). Ld. A/R pointed out that in the case before the Hon'ble Apex Court the issue was whether the notice issued after a period of four years after relevant assessment year where the assessment has been framed u/s 143(3) of the Act, proviso to Section 147 of the Act shall apply. In that case Hon'ble Apex Court has held that the AO has to first demonstrate the failure on the part of the petitioner failing which the re-opening is bad in law. Ld. AR referred to the last para of the decision of the Hon'ble Apex Court wherein the Court has upheld the decision of the Hon'ble High Court setting aside the re-opening notice issued u/s 148 of the Act. Ld. AR therefore, prayed that in view of the latest decision of the Hon'ble Apex Court, the re-opening may be quashed.

09. The Id. DR on the other hand relied on the orders of the Id. lower authorities.
010. After hearing the rival contentions and perusing the materials available on record, we find that case of the assessee has apparently



been reopened u/s 147 of the Act vide notice dated 05.04.2018. Pertinent to state that assessment u/s 143(3) is made vide order dated 23.12.2015 and the issue of the said loan of ₹19 lacs from M/s Tirumala Suppliers Pvt. Ltd. was examined by the AO after calling for necessary details/ evidences from the assessee as well as from the loan creditor u/s 133(6) of the Act. The assessee filed all the details before the Id. AO during the assessment proceedings and similarly, the loan creditor responded to the notice issued u/s 133(6) of the Act and acknowledged that the assessee has been given an unsecured loan of ₹19 lacs. The copy of the notice issued u/s 133(6) of the Act dated 01.10.2015, is available at page no. 5 of the Paper Book and the reply of the loan creditor u/s 133(6) of the Act dated 19.10.2015 is available at page no.6 of the Paper Book. Therefore, the transaction of loan was examined in the original assessment proceedings. Now, the reasons recorded by the AO has not stated as to how the assessee failed to disclose the fully and truly all material facts qua the said loan which has resulted into escapement of income. Therefore, the issue at hand is squarely covered by the decision of Hon'ble Apex court in the case of *CEAT Ltd. (supra)* and accordingly we quash the reopening of assessment made by the Assessing Officer.

011. In the result, the appeal of the assessee is allowed on legal issue.

Order pronounced in the open court on 04.03.2025.

Sd/-
(SONJO SARMA)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 04.03.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata