

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "G", MUMBAI
BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.2920/Mum/2013

Assessment Year: 2007-08

M/s Zenith Global Consultant Ltd., C/o Karrox Technologies Ltd., 2 nd Floor, 'Saurabh', Modi Estate, L.B.S. Marg, Ghatkopar (W), Mumbai-400086. PAN: AAACZ0246L	Vs.	DCIT-3(3), Aayakar Bhavan, Mumbai-400020
(Appellant)		(Respondent)

Assessee by : Shri Ajay R. Singh (AR)

Revenue by : Shri Vishwas Jadhav (DR)

Date of hearing : 02.03.2016

Date of Pronouncement : 31.05.2016

ORDER

PER PAWAN SINGH, JM:

1. This appeal filed by the assessee against the order of CIT(A)-7, Mumbai dated 01.11.2011 for Assessment Year (AY) 2007-08. Along with appeal the assessee filed application for condonation of delay as the appeal was filed beyond the prescribed period of limitation. The appeal was filed after 380 days beyond the limitation period.
2. We have perused the contents of the application for condonation of delay. In support of the application, the assessee has filed affidavit of Shri Darshan Shah, Director of the assessee-company. In the application, the assessee explained that the assessee had not received the copy of order passed by FAA due to change of their address. The assessee came to know about the outcome of the first appeal only when notice of penalty proceeding was served. Thereafter, the assessee approached their counsel namely Shri Bhupendra Shah for taking remedy. The application further disclosed that delay in filing the appeal is wholly unintentional and beyond the control of the assessee and there is sufficient cause for condonation of delay by the Tribunal. The assessee further

filed another affidavit dated 25.02.2016 of Dr. Hiru Bijlani, Director of the assessee-company in support of condonation of delay. Perusal of which revealed that the assessee had its registered office at 102 & 112 C, C-Wing, Mittal Court, 224, Nariman Point, Mumbai-21, and somewhere in Dec 2009, it was shifted to Saurabh Building, Modi Estate, LBS Marg, Ghatkopar West, Mumbai-400086. The change of address was not intimated to CIT (A) during the pendency of quantum appeal which resulted not receiving the notice of hearing on 20.09.2011 and for 01.11.2011 this proceeding remained unattended. The appellate order dated 01.11.2011 was not served in the normal course. When show cause notice of penalty u/s. 271(1)(c) of the Act, the assessee came to know about the dismissal of appeal when show cause notice for penalty u/s. 271(1)(c) was issued and assessee attended the office of AO, the affidavit further disclosed that assessee applied under Right to Information Act for seeking proof of service of notice for hearing fixed on 20.09.2011 and fixed on 01.11.2011. Ld.AR of the assessee further argued that a lenient view may be taken as there is a good case on merit and the assessee is likely to succeed.

3. We have seen that the contents of affidavit are drafted in a vague manner only to support the stand of the assessee for condonation of delay in filing of appeal. However keeping in view of right of appeal of assessee and lenient view required to be taken in matter relating to the request for condonation of delay, we find the need to condone the said delay and admit the appeal. However we find it is a fit case for order cost of Rs. 10,000/- on the assessee. The assessee shall deposit the same in Prime Minister National Relief Fund (PMNRF). We accordingly allowed the application for condonation of delay in filing the appeal, subject to deposit the cost of Rs.10,000/-in PMNRF.

4. In the appeal the assessee initially raised the following grounds of appeal:

1. *In the facts and circumstances of the case and in law, the learned A.O. erred in disallowing Rs. 88,11,653/- being write-off of Stock-in-trade.*

Without prejudice to the above and even after estimating Net Profit Vis 143(3),

2. *In the facts and circumstances of the case and in law, the learned A.O. erred in issuing notice u/s 271(1)(c) r.w.s 274 and also charged interest u/s 234.*

3. *The Learned Commissioner of Income Tax [A] also erred in confirming above addition made by the A.O Ex-Parte.*

[C] Relief Prayed:

The appellant therefore prays follows,

1. *To allow the write-off of Rs. 88,11,653/- out of write-off of Stock*

2. *To delete the initiation of penalty u/s 271(1)(c) and levy of interest u/s 234.*

3. *To delete the other addition confirmed by the Commissioner of Income Tax (Appeal), Ex-Parte.*

[D] General: -

- *The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- *This appeal is filed in time and may please be allowed in full. Due to change of address the appellant order was not served on the Appellant.*
- *A Detailed paper book along with case laws will be submitted at the time of hearing.*

5. However, the assessee vide his application dated 13th October 2015 filed on 23.10.2015 raised additional/ amended ground of appeal as under:

- (1) *The CIT(A) erred in passing an ex-parte order without providing adequate opportunity of hearing to the assessee and in violation of principles of natural justice.*
- (2) *The CIT(A) erred in upholding the disallowance of Rs. 88,11,653/- being write-off stock-in-trade.*
- (3) *The CIT(A) erred in adding Rs. 88,11,653/- to book profits u/s. 115JB of the Income Tax Act, 1961.*
- (4) *Order of CIT(A) is bad in law.*
- (5) *The assessee craves leave to add, amend or alter the foregoing grounds of appeal.*

6. The brief facts of the case are that the assessee-company is engaged in the business of service industry involving software development and educational booklet selling. The assessee filed return of income on 30.10.2007 declaring total income at Rs. Nil. The case of assessee was selected for scrutiny and while making the assessment, besides the other addition, the Assessing Officer (AO) disallowed a sum of Rs. 88,11,653/- on account of claim of deduction of write off and Rs. 88,11,653/- to the book profit u/s. 115JB of the Act in its order dated 20.11.2009.

7. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). As per the order of CIT(A), the case was fixed for hearing on 20.09.2011 and none appeared before the First Appellate Authority (FAA) / CIT(A) on the appointed date. The case was again fixed for final hearing on 01.11.2011 and none appeared on behalf of the assessee on that date too. Thereafter the FAA decided the case on the basis of material available on record vide its order dated 1.11.2011 and dismissed the appeal of the assessee. Aggrieved with the order of CIT(A) the present appeal is filed before us.

8. We have heard the AR of the assessee and DR for the revenue and perused the material available on record. We are of the considered view that the assessee is entitled for hearing afresh at the stage of First Appellate stage on merit as the assessee failed to appear and put his case, due to bonafide reasons. Hence, we are restoring the case to the file of FAA/CIT(A) to decide the case afresh on merit in accordance with law. The Id CIT(A) shall provide fair and adequate opportunity to the assessee. The assessee is directed to fully co-operate during the proceeding and not to seek

adjournment without reasonable ground. With this observation the present appeal is allowed.

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

Order pronounced in the open court on this 31st May, 2016.

Sd/-

(D.KARUNAKARA RAO)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated /05/2016

S.K.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/
DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार

(Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai