

“1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) without giving reasonable opportunity of hearing to the assessee which is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in not considering the condonation of delay, therefore, the order passed by the Ld. C.LT.(A) is completely arbitrary, unjustified and illegal.

4. For that on the facts of the case, the Ld. C.LT.(A) was wrong in not considering the merit of the case, therefore, the order passed by the Ld. C.LT.(A) is completely arbitrary, unjustified and illegal.

5. For that on the facts of the case, the Ld. C.LT.(A) was wrong in dittoing the order of the A.O. and confirming the addition u/s. 40a(ia) of the Income Tax Act amounting to Rs.13,01,240/- which is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in confirming the addition u/s. 40a(ia) of the I.T. Act amounting to Rs. 13,01,240/- as the assessee was not liable to deduct TDS on payment made for transport charges, therefore, the said disallowance u/s. 40a(ia) is completely arbitrary, unjustified and illegal.

7. For that on the facts of the case, the Ld. C.LT.(A) was wrong in holding that the assessee was covered by Section 194C of the Income Tax Act, therefore, the disallowance made u/s. 40a(ia) amounting to Rs. 13,01,240/- by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

8. For that the interest u/s. 2348 & 234D amounting to Rs.118,397/- & Rs.3,992/- charged mechanically is wrong & illegal..”

4. At the time of hearing we find that this appeal has been filed with an appeal fee of Rs.500/- only and the Registry noted that there is deficit payment of appeal fee to the tune of Rs.9,500/-. On this aspect Ld. AR submitted that when the only issue is in respect of condonation of delay the appeal fee payable is only Rs.500/- and in support of such a contention he placed reliance on a decision rendered by the Hon’ble Karnataka High Court in the case of Rajkamal Polymers (P) Ltd. Vs. CIT 291 ITR 314 (Karn.). The Ld. AR also filed a copy of order dated 25.08.2015 of a coordinate bench of this Tribunal in ITA No. 1363 & 1364/Kol/2014 in the case of M/s. M.E. Enterprises Vs. ITO and M/s. Hooghly Traders Vs. ITO respectively, which are said to be the concerns of the assessee. In this decision the coordinate bench of this Tribunal while following the decision of Hon’ble Karnataka High Court in the case of Rajkamal Polymers (P) Ltd., supra held that Rs.500/- is sufficient in respect of condonation of delay.

5. Now coming to the aspect of delay, it is only 8 days i.e. sought to be condoned. The reason attributed is sudden illness of the Accountant who has been looking after the affairs of the assessee. By preferring an appeal with 8 days delay the assessee does not stand to any gain and when such a request is accompanied by a medical certificate it does not appear to be reasonable to refuse the condonation of delay. While respectfully following the ratio in *Collector of Land Acquisition vs Mst Katiji & Others 167 ITR 471 (SC)*, we find that since in this case the assessee was prevented by sufficient cause for filing the appeal within the period of limitation before the Ld. CIT(A), we allow this appeal by condoning the delay and directing the Ld. CIT(A) to admit the appeal and to dispose it off on merits after giving adequate opportunity of being heard to the assessee. Appeal of assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 26.10.2016

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(K. Narasimha Chary)
Judicial Member

Dated : 26th October, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – M/s. Cargo Handling Corporation, 26, Karl Marx Sarani, Kolkata-700 023.
2. Respondent – ITO, Ward-28(2), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.