

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH
(Conducted Through Virtual Court)
Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 448/Ahd/2020
Assessment Year 2015-16

Pepperazzi Hospitality Pvt. Ltd. C/o M.S. Chhajed & Co. “Kamal Shanti” Besides Bank of Baroda, Nr. Sardar Patel Under Bridge Naranpura, Ahmedabad-380014 PAN: AAHCP3354Q (Appellant)	Vs	The ITO, Ward-3(1)(2), Ahmedabad (Respondent)
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Assessee by: Shri Hem Chajad, A.R.
Revenue by: Shri R.R. Makwana, Sr. D.R.

Date of hearing : 30-03-2022
Date of pronouncement : 08-04-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-9, Ahmedabad in Appeal no. CIT(A)-9/10353/ITOWd.-3(1)(2)/17-18 vide order dated 25/09/2018 passed for the assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:-

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal</i>
1	<i>The Order of the Ld. CIT (A) is against the law, equity and natural justice.</i>	
2	<i>The Ld. CIT (A) has erred in law and on facts in upholding the order of Ld AO for rejection of Books of Accounts of appellant.</i>	
3	<i>The Ld. CIT(A) has erred in law and on facts in upholding the order of Ld AO to determine total income of appellant @ 8 Percent of turnover plus Rs.66,025/- being part of the business activities and thus determined total income of Rs.22,88,154/-.</i>	
4	<i>The Ld CIT(A) has passed the order ignoring the statement of facts filed by appellant.</i>	
4	<i>The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.</i>	
<i>Total tax effect</i>		<i>Rs. 5,95,590</i>

3. At the outset, we also note that there is a delay of 655 days in filing of appeal. The assessee has filed an affidavit dated 29 March 2022 stating that delay in filing appeal before ITAT is caused due to the fact that neither the

notice of hearing was received by the assessee from Ld. CIT(A) nor was the order passed by Ld. CIT(A) sought to be appealed against served upon the assessee, thereby causing the delay in filing appeal. The assessee came to know about the order of Ld. CIT(A) on going through the ITBA portal for status of appeal/ demand. Thereafter, he filed appeal before ITAT.

3.1 The Tribunal, u/s 253 of the Act, may admit an appeal, or cross-objection, after the expiry of prescribed period, if it is satisfied that there was sufficient cause for not presenting it within that period. The Supreme Court in the case of **State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 (SC)** held that the expression "sufficient cause" for condonation of delay in section 5 of Limitation Act should receive a liberal construction so as to advance the substantial justice when no negligence or inaction or want of bona fide is imputable to party. The Mumbai ITAT in the case of **Sterlite Industries (India) Ltd. v. Addl. CIT/Jt. CIT [2006] 6 SOT 497 (Mum.)** laid down the following proposition on power of ITAT to condone delay:

“The expression ‘sufficient cause or reason’ as provided in sub-section (5) of section 253 of the Act is used in identical position in the Limitation Act, 1963 and the CPC. Such expression has also been used in other sections of the Income-tax Act such as sections 274, 273, etc. Keeping in mind the authoritative pronouncement of the Supreme Court, it is an admitted position that the words ‘sufficient cause’ appearing in sub-section (5) of section 253 of the Act should receive a liberal construction so as to advance substantial justice. It must be

remembered that in every case of delay, there can be some lapse of the litigant concerned. That alone is not enough to turn down the plea and to shut the doors against him. If explanation does not smack of mala fide or does not put forth a dilatory strategy, the Court must show utmost consideration to such litigant. Further, the length of delay is immaterial, it is the acceptability of the explanation and that is the only criteria for condoning the delay.”

3.2 The Supreme Court in the case of **SeniorBhosaleEstate (HUF) v. ACIT [2019] 112 taxmann.com 134 (SC)** held that **where revenue did not expressly refute stand taken by assessee that they had no knowledge about passing of order of Tribunal**, dated 29-12-2003, until June, 2008, assessee's delay of 1754 days in filing appeal before Bombay High Court against Tribunal order was to be condoned. The brief facts of the case were that assessee sought condonation of delay of 1754 days in filing appeals against order, dated 29-12-2003, passed by Tribunal. The assessee **pleaded that it had no knowledge about passing of Tribunal's order, until it was confronted with auction notices in June, 2008, issued by competent authority**, immediately upon which, assessee filed appeal with High Court. The High Court dismissed assessee's appeals holding that these were not fit cases in which inordinate delay of 1754 days in filing appeals deserved to be condoned. However, it was found that respondent revenue did not expressly refute stand taken by assessee that they had no knowledge about passing of order, dated 29-12-2003, until June, 2008. The Supreme Court held that unless that fact was to be refuted by the Revenue, question of disbelieving stand taken by assessee on affidavit, could not arise and for

which reason, High Court should have shown sympathy to assessee by condoning delay in filing concerned appeal(s).

3.3 The Vishakhapatnam ITAT in the case of **Smt. Samanthapudi Lavanya v. ACIT [2021] 127 taxmann.com 188 (Visakhapatnam - Trib.)** held that where assessee was under bona fide impression that its appeal had been filed by accountant, but came to know fact of not having filed appeal when there was pressure from department for payment of demand, delay of 492 days in filing appeal was to be condoned, in the interests of justice.

3.4 In our considered view, looking into the reasons in the affidavit filed by the assessee wherein he has submitted that he had no knowledge of order being passed by Ld. CIT(A) and later came to know about the same only on going through the ITBA portal and coupled with the fact that the Revenue has neither refuted the contention of the assessee nor has brought anything to record to validate that copy of order of Ld. CIT(A) was duly served upon the assessee, in the interests of justice, we are condoning the delay in filing of appeal by the assessee.

4. Now on the merits of the case, the brief facts of the case are that the assessee filed original return of income showing total receipts of Rs. 2,85,12,858/-. Subsequently, the return was revised showing total receipts of Rs. 1,60.02,604/-. The Ld. AO during the course of assessment proceedings noted that in the Tax Audit Report for the year, the assessee has shown gross turnover at 'Zero'. Further, the assessee did not furnish Tax Audit Report for

the revised return. The Ld. AO noted that as per audited annual accounts submitted the assessee vide submission dated 12-09-2017, the assessee has debited financial expense of Rs. 85,33,664/- although there was no existing loan or loan taken during the year. However, on a perusal of revised list of expenses submitted by the assessee vide submission dated 27-11-2017, Ld. AO noted that no financial expenses have been claimed by the assessee. Therefore, correctness of accounts was not found satisfactory. The Ld. AO further noted that vide submission dated 27-11-2017, the assessee *suo moto* revised loss shown in the original and revised return and now had shown positive income of Rs. 7,79,550/-, without any basis or supporting evidence. The Ld. AO accordingly rejected assessee's books of accounts u/s 145(3) of the Act assessed income @ 8% of gross receipts of Rs. 2,77,76,621/- over and above other income of Rs. 66,025/- shown in the ITR. The Ld. AO held as under while passing the order:

“16. As already discussed, despite opportunities the assessee has failed to comply the producing books of account called for which included final accounts, ledger account, purchase register, purchase bills, voucher of expense incurred by cash, electricity bill, salary register and cash book. Due to assessee's failure to comply with these details, the expense claimed in the ITR could not be verified. Therefore, there is enough reason to believe that the books were not maintained in accordance with the standards notified. Therefore, the correctness and completeness of the account of the assessee is not found to be satisfactory. The assessee's book result is therefore rejected u/s 145(3) of the Act and the income is assessed at the rate of eight percent of the gross receipts of Rs 2,77,76,621/- over and above the other income of Rs.66,025/- shown in the ITR. The income at the rate of eight percent of the gross receipt of Rs. 2,77,76,621/-, works out to Rs. 22,22,129/-. The assessee has shown other income of Rs. 66,025/- in the P&L part of the original ITR. Accordingly, the

total income of the assessee is assessed at 22,88,154/- (22,22,129 + 66,025/-)."

5. Before, the Ld. CIT(A), the assessee did not cause appearance and accordingly he confirmed the order passed by Ld. AO by observing as below:

"3. The only ground of appeal is against estimating the income @8% of turnover over and above the returned income of Rs. 60,025/- by the A.O. In response to appeal filed, notice was issued on 7/6/2018 fixing the compliance on 27/6/2018. Another notice was issued on 21/8/2018 fixing compliance on 12/9/2018. Both the notices were returned as 'not known'. The notices were issued on the address given in form-35. As the appellant has not pursued the appeal, the same is decided on merit. The appellant has filed return showing total receipt of Rs. 2,85,12,858/-. Subsequently return was revised showing total receipt of Rs.1,60,02,604/-. Appellant has shown turnover as 'zero' in form no.SCD uploaded on 10/9/2015. The A.O has noted that appellant has claimed finance expenses of Rs. 85,33,664/-, but there was no existing loan or any loan taken during the year. A.O has called for books of accounts, bills, vouchers etc. in support of the return of income, but it has failed to submit the details. Therefore, A.O has rejected the books of accounts and estimated the income @8% of the gross receipt of Rs.2,77,76,621/-. Appellant during the appellate proceedings has not made any submission, A.O has estimated the income fairly @8% of turnover as appellant has failed to produce books of accounts etc. Therefore, addition made by the A.O is confirmed.

4. In the result, the appeal is dismissed."

6. Before us the Ld. Counsel for the assessee has submitted that the assessee never received notice of hearing from the Ld. CIT(A) and hence could not cause appearance before first appellate authority. The Revenue on the other hand has not contested the claim of the Ld. Counsel for the assessee that the assessee was never served with the notice of hearing by Ld.

CIT(A). In the interests of justice, we are restoring the file to the Ld. CIT(A) for carrying out a detailed inspection of books of accounts of the assessee and carry out a verification of their genuineness and authenticity. In this regard, opportunity may also be given to the Ld. Assessing Officer for cross verification. The assessee is also directed to kindly co-operate in the matter and provide assistance to the Revenue.

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

Order pronounced in the open court on 08-04-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 08/04/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद