

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "I", MUMBAI
BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
ITA No.2360/Mum/2014
Assessment Year: 2009-10**

Integrated Spaces Ltd., D Wing, Karma Sankalp, Corner of 6 th & 7 th Road of Rajawadi, Ghatkopar East, Mumbai-400077 PAN:AACCI0434M	Vs.	DCIT Circle 9(2), Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-20
(Appellant)		(Respondent)

Assessee by : Shri J.P.Bairagra

Revenue by : Shri Dr. Dipak Ripote (DR)

Date of hearing : 01.10.2015

Date of Pronouncement : 13.01.2016

ORDER

PER SANDEEP GOSAIN, JM:

The present appeal is directed against the order dated 02.09.2013 passed by the CIT(A)-20, Mumbai thereby dismissing the appeal filed by the assessee and upholding the assessment order dated 23.12.2011 passed by the Assessing Officer (AO) on the following grounds of appeal:

- 1. The learned Commissioner of Income Tax (Appeals) erred dismissing the appeal filed by the appellant company in limen.*
- 2. The learned Commissioner of Income Tax (Appeals) further erred in passing ex parte order and dismissing the appeal.*
- 3. The learned Commissioner of Income Tax (Appeals) further erred in confirming the disallowance of 50% of administrative expense amounting to Rs. 7,19,300/-.*
- 4. The learned Commissioner of Income Tax (Appeals) further erred confirming the disallowance of 20% of financial expenses amounting to Rs. 7,89,859/-.*
- 5. The appellant craves to add to, alter or amend the foregoing grounds, which are without prejudice to one another, at the time of hearing.*

2. The brief facts of the case are that the assessee is engaged in the business of dealing in TDR and construction etc. The return of income was e-filed by the assessee on 29.09.2009 declaring loss of Rs. 49,47,378/-. The return was accordingly processed u/s 143(1) of the Income-tax Act, 1961 (for short 'the Act'). The case of the assessee was selected for scrutiny and required notices were served. After considering the reply, the AO made the assessment u/s 143(3) of the Act vide order dated 23.12.2011 and held that 50% of the Administrative Expenses should be disallowed and accordingly a sum of Rs. 7,90,300/- was disallowed and added to the total income of the assessee and similarly the AO also disallowed 20% of the financial expenses and accordingly a sum of Rs. 7,89,859/- were disallowed and added to the total income of the assessee under the head "Administrative Expenses" and "Financial Expenses".

3. Aggrieved by the order of AO, the assessee filed an appeal before the CIT(A), after expiry of period of statutory limitation provided under the Act. Even after filing appeal, the assessee did not attend the office of CIT(A) and accordingly the CIT(A) passed the following orders:

"In this case assessment order was passed on 23.12.2011 u/s.143(3) of the I.T. Act, hence appeal was filed within one month of receipt of the assessment order and demand' notice, but appellant has filed this appeal beyond time limit on 8.04.2013, hence at the time of filing of appeal, appellant was made aware; that this appeal was time barred hence could not be admitted. However, considering the requirement of natural justice on 8.4.2013 itself, appellant was asked to explain as to why this appeal filed beyond time limit should not be rejected. Case was fixed for hearing on 29.04.2013 at 11.30 AM but on this date of hearing nobody had attended the proceeding nor was there any explanation filed. Further, it is found from the record that there is no sort of any communication. Therefore, this time barred appeal cannot be admitted.

2. Further, the reason given while filing return of income does not deserve condonation of delay, The reason given by the appellant is as under :-

"That we are intending to file appeal for the assessment year 2009 - 2010 and the same was not filed within the prescribed time limit as per the provisions of the Income Tax Act, 1961, due to since the addition was made by the learned Assessing Officer was not invoked any penalty and since if was a small addition was made by the learned Assessing Officer. However in the subsequent year, on the same line of action, successor of the learned Assessing Officer has made huge addition and therefore the appellant preferred appeal and for that the appellant hereby prays to kindly condone the delay and oblige."

3. It can be seen from the above that assessment order has been accepted, but because of additions in subsequent year on the same line of disallowance of expenditure, appellant has filed this appeal, which cannot be regarded as bonafide and genuine reason for filing time barred appeal. If appellant has got all the evidences in support of its return of income in subsequent year, it can substantiate the claim and definitely no addition can be made without contrary evidence or for want of genuine evidence. Thus, the reason given by appellant while filing return of income is untenable, not convincing one. Thus, the time barred appeal so filed is not admitted, therefore, the appeal so filed is dismissed as not admissible.

4. In the result, appeal is dismissed.

4. Aggrieved by the order of CIT(A), the assessee filed the present appeal before us on the grounds reproduced hereinabove.

5. Before us, after the expiry of period of limitation, the Authorised Representative (AR) representing the assessee also moved an application for condonation of delay along with the supportive evidence.

The contents of the application are as under:

April 16, 2014

To,

The Registrar,

Income Tax Appellate Tribunal,

Mumbai.

Re: M/s INTEGRATED SPACES LTD.

Assessment Year: 2009-10

Sub: Petition for Condonation of Delay for ruing Appeal

Dear Sir,

1. The Ex-parte order of CIT (A) dated 02-9-2013 for the above asst. year was served on the appellant company on 28-09-2013. Accordingly the appeal should have been filed on or before 27-11-2013. However, the appellant company has filed appeal on 09-4-2014 and therefore appeal filed by appellant company is late by 133 days.

2. In this respect, we submit that while passing the order u/s 143(3) of the Income Tax Act, 1961 the assessing officer made ad hoc estimated disallowance out of the administrative expense amounting to Rs. 7,19,300/- and out of financial expenses amounting to Rs.7,89,859/-. Even after the above disallowance, assessed loss was Rs. 33,67,219/- and therefore the assessee company has not filed appeal before Hon. Tribunal immediately in time as it was not affecting the tax liability.

3. However, in the assessment order passed u/s 143(3) for A.Y.2010-11, the assessing officer made the similar disallowances and against the said order for asst. year 2010-11 the assessee company had filed appeal before CIT (A). Therefore, in order to ensure that such estimated disallowances are not made every year, it has been decided by the

assessee company to file appeal before Hon. ITAT for A.Y. 2009-10 belatedly.

4. We are filing herewith affidavit made by Shri Kantilal Savla, Director of appellant company to this effect.

5. In these circumstances, the delay in filing of appeal should be condoned and appeal should be decided on merit.

6. Considering the contents of the aforementioned application and taking into consideration the supportive affidavit, we are of the opinion that although the grounds mentioned in the application are not sufficient to condone the delay, but considering the principles of Fundamental Justice, equity and in the interest of justice and considering the principles of *audi altram partem*, we allowed the application and condone the delay in filing the appeal.

7. Now coming to the merits of the case, we have also perused the orders passed by the CIT(A) and we have noticed that the said order was passed ex-parte because the assessee had not appeared before the CIT(A) at the time of final hearing and moreover we have also perused the earlier order of CIT(A) in the assessee's own case in respect of AY-2010-11 in which both the issues i.e. Administrative Expenses as well as Financial Expenses were duly considered and were decided on merits in Appeal No.CIT(A)20/DC-9(2)/IT-16/2013-14 dt. 02.09.2013.

8. Both the grounds decided on merits for AY-2010-11 are reproduced herein below:

"4.1 Ground No.2 is against the disallowance of an amount of Rs.12,20,697/- being 50% of total administrative expenses. According to the Assessing Officer, appellant has claimed miscellaneous expenses under the head administrative, selling and other expenses. According to the Assessing Officer, during the year appellant has only received income from sale of TDR, hence entire expenses cannot be attributed to the business of purchase and sale of TOS, hence 50% of expenditure has been disallowed by the Assessing Officer.

4.2 On other hand, in appeal, it is submitted that Ld. Assessing Officer a not properly appreciated the entire facts of the case. It is submitted that it can be seen from the page No.42, 43 of the paper book that such expenses under reference are incurred for the purpose of purchase and sale of TDR. During the year, the sale of TOR is of Rs. 52144832/-. Looking to the value of business, such expenditure is genuine. As regards, bifurcation of expenditure, it is submitted that relevant expenditure is always taken as work in progress. Thus the direct cost of project is credited to work-in-progress account and same has been duly reflected in Schedule '0'. In view of such argument it is submitted by the A.R. of the appellant that disallowance to the extent of 50% is to be deleted.

4.3 I have considered the finding of the Assessing Officer and rival submission, carefully. I find that Assessing Officer has made disallowance to the extent of 50% out of total administrative expenses without any valid reason. He has mentioned that entire expenses of Rs.24,41,394/- is not attributable to the business of purchase and sale of TDR, because assessee has a substantial business of construction. Such argument is not tenable because, Assessing Officer has failed to demonstrate as to how the administrative expenses including miscellaneous expenses are not related to TDR It is important to note that Assessing Officer has not doubted the genuineness of miscellaneous expenses of Rs.24,41,394/- but has disallowed 50% merely on the ground that such miscellaneous expenses are not relatdt o purchase and sale of TDR It is very evident that Ld. Assessing Officer has failed to appreciate the business activities of the appellant involved in real estate development and also purchase and sale of TDR There is work-in-progress of Rs.41,48,01,089/- it means there is integrated business activities, hence such expenditure cannot be disallowed without any valid reason. Obviously, for the sake of making disallowance Assessing Officer has disallowed 50% of such miscellaneous expenses which cannot be sustained. Assessing Officer is therefore directed to delete the disallowance of Rs.12,20,697/-.

4.4 In the result, Ground No.2 is allowed.

5.1 Ground No.3 is against the disallowance of financial expenses to the extent of 20% of total expenditure of Rs.88,570/-. According to the Assessing Officer, entire expenses cannot be attributed to the business of purchase and sale of TOR as the assessee has substantial business of

construction. According to the Assessing Officer, it is held that 25% of the financial expenses should be disallowed. Accordingly, he has disallowed Rs. 17,714/-.

5.2 On other hand, it is argued that Assessing Officer has wrongly disallowed the genuine expenditure without appreciating the facts of the case. From the details of the financial expenses, it can be noted that such expenditure is of interest paid on loan taken against Honda City Car, such finance charges are not havening any connection with construction activities. Appellant has not claimed any deduction of interest on loan taken which is used for construction business, such disallowance of genuine expenditure should be deleted.

5.3 I have considered the issue under appeal, carefully. I find that Ld. Assessing Officer has not properly appreciated the full fact facts due to that he has presumed wrong fact. It is very obvious that an amount of Rs. 88,570/- is related to the interest expenditure which is on account of loan obtained for purchase of Honda City Car. Such Car is part and parcel of fixed assets vide Schedule 'E' , hence, it is wrong on the part of the Assessing Officer to presume that such financial expense is related to TDR or construction business. As evident from the submission of the appellant dated 11.04.2014, as briefly stated hereinabove, such finance charge is related to loan taken from purchase of Honda City Car. Thus, it is very obvious that Assessing Officer has committed mistake while disallowing financial expenses. Thus, in the light of the facts of the case, disallowance so made of Rs.17,714/- is deleted.

5.4 In the result, Ground No.3 is allowed."

9. Since both the issues raised above before us were also dealt with by the CIT(A) for AY-2010-11, but in the appeal for AY-2009-10, the assessee had not put appearance before the CIT(A) and therefore, the CIT(A) had decided the appeal ex-parte. On the other hand, the DR supported the orders passed by AO & CIT(A). Be that as it may, considering the aforementioned peculiar factual position and considering the interest of justice, we are of the considered opinion that the ex-parte order passed by the CIT(A) is set-aside and the matter is remanded back

to the file of CIT(A) for deciding the case afresh for AY 2009-10 after providing the opportunity of hearing to the assessee.

10. In the result, appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on this 13th day of January, 2016.

Sd/-

(D.KARUNAKARA RAO)

ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)

JUDICIAL MEMBER

Mumbai, Dated: 13.01.2016

Sharwan P.S.

Copy to: The Appellant

The Respondent

The CIT, Concerned, Mumbai

The CIT(A) Concerned, Mumbai

The DR "I" Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.