

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-2' NEW DELHI**

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. Nos. 4734 & 4735/Del/2015

Assessment Year: 2005-06

INDIA PETROLEUM,
C-140, 1ST FLOOR,
DEFENCE COLONY,
NEW DELHI – 24
(PAN: AAAF19089H)
(ASSESSEE)

VS. DCIT, CC-7,
NEW DELHI

(RESPONDENT)

Assessee by: SH. RAJIV SAXENA, & MS. SUMANGLA
SAXENA, ADVOCATES

Revenue by: NONE

Date of Hearing on : 17/08/2016

Order Pronounced on : 02/09/2016

PER H.S. SIDHU, JM

ORDER

These appeals are filed by assessee against the separate orders both dated 16.3.2015 passed by the Ld. CIT(A)-24, New Delhi relating to Assessment Year 2005-06. Since both the appeals are for same year, hence, heard together and are being disposed of by this common order for the sake of convenience.

2. The grounds raised in 4734/Del/2015 read as under:-

1. That on the facts and circumstances of the case, the order passed by the Ld. CIT(A)- 24, New Delhi is perverse ,illegal and hence it is liable to be quashed.
2. That on the facts and circumstances of the case the Ld. CIT(A) has erred in dismissing the appeal filed by the assessee

observing that delay of 6 years in filing of appeal cannot be taken lightly, thereby rejecting all the pleas of the assessee without looking into the merits of the case.

3. That on the facts and circumstances of the case the Ld. CIT(A) has erred to ignore the vital fact that the assessment orders were never served to the assessee and the assessee after obtaining the certified copies from the department has filed the appeals as the business of the assessee was totally closed down and there was nobody to receive the order.

4. Without prejudice to the submissions made above the Ld. CIT(A) has erred in dismissing the appeal by taking an hypothetical stand that at the assessment stage there has been no follow up from the appellant side and the additions have been made solely because of non submission of details rejecting the all the plea of the assessee that the assessee deals in sale of administrative prices, products and GP rate of 4% in place of 1.59% cannot be applied arbitrarily as such the order is liable to be quashed on merits also.

5. Without prejudice to the submissions made above the Ld. CIT(A) has erred in ignoring the facts that the assessee was having a valid confirmation of the unsecured loans of Rs. 7 Lac. The non consideration of the same is unfair as such the order is liable to be quashed on merits also.

6. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.

3. The grounds raised in 4735/Del/2015 read as under:-

1. That on the facts and circumstances of the case, the order passed by the Ld. CIT(A)- 24, New Delhi is perverse, illegal and hence it is liable to be quashed.

2.1 That on the facts and circumstances of the case the Ld. CIT(A) has erred in dismissing the appeal filed by the assessee observing that delay of 6 years in filing of appeal cannot be taken lightly, thereby rejecting all the pleas of the assessee without looking into the merits of the case and the fact that the assessee was not served the quantum orders as well as penalty orders. Thereby the Id. CIT(A) has erred in confirming the penalty imposed by the AO

3. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.

4. Facts narrated by the revenue authorities are not disputed by the Ld. A.R. of the assessee, hence, the same are not repeated here for the sake of convenience.

5. Notice of hearing was sent to both the parties and in response to the same none appeared on behalf of the Department, nor any application for adjournment has been filed by the Department. Keeping in view of the facts and circumstances of the present case, I am of the considered view that no useful purpose would be served to serve the notice again and again to the Department, therefore, I am deciding this Appeal as Exparte qua Department, after hearing the Ld. AR of the assessee and perusing the records.

6. At the time of hearing, Ld. Counsel of the assessee has filed the Application of the Assessee, Partner of the Company for condonation of delay of 56 days on the reasons mentioned therein alongwith the supporting Affidavit. For the sake of clarity, we are reproducing the contents of the Application for condonation of delay as under:-

The aforesaid two appeals are against the ex-parte assessment and penalty levied on account of additions made during assessment of the aforesaid firm in which the

undersigned was partner along with my brother Sh. Jagrit Khaitan. Both additions during assessment and penalty were confirmed by CIT (Appeals) without going into merits of the case

It is humbly submitted that after marriage in 1980, I have shifted to Kanpur at my matrimonial house with my husband and have neither take any profit nor any concern with business which was looked after by my brother and other family members from time to time.

It is submitted that I had resigned from the firm M/s India Petroleum Pvt. Ltd in 2008 leaving my brother Sh. Jagrit khaitan as the sole Partner. After the death of the sole partner Sh. Jagrit Khaitan after a prolonged illness I have come to know that demand has been created against the firm during the period in which I was partner and so liability will fall on me as other partner is no more. Thereafter I obtained the said assessment order and filed appeal before CIT(A) who dismissed the appeal by holding that the assessment order would have been taken much earlier and so did not accept the date of receipt of the assessment order i.e. 28-01-2008 by me and disposed off the appeal against the Assessee without deciding the case on merits.

It is most humbly submitted that against the order of the Ld. Commissioner of Income Tax (Appeals), an appeal was prepared on 13-04-2015 itself and the appeal fee of Rs.10,000/- and Rs.500/- relating to assessment u/s 144 of the IT Act and penalty bearing ITA No. 4734/0/2015 and 4735/D/2015 respectively, were deposited on 16-04-2015 itself. Copy of the same has already been submitted before

your goodself. However, the Hon'ble Income Tax Appellate Tribunal did not accept the appeal in the absence of correct sub-head of the Challan as the same was deposited under the head (400) which relates to regular assessment instead of minor head (300) which relates to tax on self assessment. They asked to submit rectified Challan after due process. Therefore, an application regarding rectification of the said error was made in due format to the Ld. Assessing Officer.

It is further submitted that consequently a combined application dated 24-04-2015 was moved in the office of the concerned Ld. Assessing Officer requesting him to rectify the Challan which was deposited wrongly under head (400), however no action could be taken by him stating that PAN of the assessee was outside his jurisdiction as Smt. Indu Narain was residing at her Matrimonial House in Kanpur and therefore had obtained PAN from her Kanpur address and it was told that the same will take time.

It is necessary to submit that another application dated 19-05-2015 was once again moved in the office of the Ld, Assessing Officer requesting him to correct the Challan, however the same is pending for adjudication and no rectification was made on the Challan initially deposited.

It is further submitted that thereafter I obtained fresh Challan by depositing again appeal fee of Rs.10,000/- and Rs 500/-by new challans and the appeal was finally filed in the rriahne prescribed on 17-07-2015.

It is humbly submitted that the appeal has been filed immediately after receiving the Challan but now the same

were late by about 55 / 56 days the delay is not because appeal was not prepared on time.

It is, therefore, humbly submitted since the delay was beyond my control but due to procedural norms and despite my best efforts the professionals who were engaged for depositing fees and getting rectified Challans could not get the same due to internal administrative problems of IT Deptt who have 'received the money.

It may kindly be appreciated that appeal was prepared on time and fee was also deposited on time and so there was no lapse on the part of the undersigned the delay may kindly be condoned and the matter be heard and disposed off thereafter on merits of the case.

An affidavit stating these facts on oath duly notarized supporting this application and the earlier application filed by AR along with all documents, is enclosed.

7. Keeping in view of the facts and circumstances as explained above in the Application for Condonation of delay, I am of the view that the reasons mentioned for delay in filing the Appeals before the Tribunal are seems to be genuine and the delay, if any, deserve to be condoned. Accordingly, I condone the delay of 56 days in filing both the Appeals before the Tribunal.

8. At the time of hearing, Ld. Counsel of the assessee has stated that Ld. CIT(A) has dismissed the Appeal of the Assessee being time barred and has not decided the issue on merits. He draw our attention towards the para no. 4 in which the Assessee has explained the reasons for delay and established that delay has been caused beyond the control of the assessee and the same is deserved to be condoned.

9. I have heard Ld. Counsel of the assessee and perused the records especially the contention raised by the assessee before the Ld. CIT(A) which is mentioned in the impugned order vide para no. 4. For the sake of convenience, we are reproducing the para no. 4 to 4.3 of the impugned order as under:-

“4. Determination

4.1 I have considered the submissions of the AR. The order u/s. 144 is dated 28.12.2007. The appeal has been filed on 13.2.2013. In the appeal memo dated of service of demand notice has been stated to be 28.1.2013. In the application for condonation of delay, it has been stated that the appellant had not received the assessment order and the demand notice originally and hence a certified copy of the order was obtained on 28.01.2013. If it is assumed that the order has been dispatched as on 28.12.2007, the same should have reached the assessee within next 4 to 7 days. Thus, appellant should have filed the appeal by the first week of February, 2008. However, the appellant has filed the present appeal on 28.01.2013 after a gap of almost 6 years. The AR has made a very detailed written and oral submission. It has been submitted that there was disturbance in the business due to the death of the working partners and differences between the brother, & sister who were the partners of the firm after the death of their father the main person behind the firm's business. The detailed submission made regarding brief history of affairs of the firm are as under:-

“The force behind the business was Shri Durga Das Khaitan - a highly respected dealer of Bharat Petroleums having various establishments at Shakurbasti, New Delhi, Aligarh, Khurja, Jaipur, Mumbai, etc. He had a turnover of more than 500 crores in various petroleum products. The firm India Petroleums was constituted as a partnership between his children - Shri Jagrit: Khaitna, Ms. Kumud Khaitan and Ms Indu Khaitan (Now Mrs. Indu Narain). The working was being handled 100% by the father Shri Durga Das Khaitan. The children (all major) were sleeping partners. On the demise of unmarried Ms Kumud Khatina in 1998, Shri Durga Das Khaitan took her place in the partnership .firm and continued the business. On the demise of Shri Durga Das Khaitan in 1999, Shri Jagrit Khaitan and Smt Indu Narain (Brother-Sister) became 50%-50% partners with Shri Jagrit Khaitan being the running partner and Smt. Indu Narain being the sleeping partner. The business remained the same, with some minor trading in a few petroleum products other than PDS Kerosene.

Sh. Jagrit' Khainta was the running partner of the firm, and was handling all the affairs of the company; and Indu Narain was only a dormant partner having very less knowledge of business operations. Smt Indu Narain never had any access to the books of account or the premises or personnel of India Petroleums, being a sleeping partner - and fully trusted her father - and then her brother to manage the affairs as per their convenience. Also being aggrieved by being kept in the dark regarding the actual working of the firm, and not being provided access to any books of accounts, Smt Indu Narain resigned from the firm on 31.10.2008. The Income, Tax, sales tax, Civil- supply departments as well as Bharat Petroleum were informed in writing about the resignation. A newspaper advertisement in a local Aligarh paper was also published to this effect. The income tax department was also appraised of this advertisement. Further Mr. Jagrit Khaitan also died on 17.01.2010 as a result of which the business affairs get totally affected. Even at the time of demise of Sh. Jagrit Khaitan the books of accounts were supposedly in his personal possession and Indu Narain was unable to get any information regarding the working of the firm, its taxation liabilities etc. Nobody was in control of the information after the death of Sh. Jagrit Khaitan; also Smt Indu Narain, till recently, was unaware of any departmental proceedings and arrears and appeals and had no access to papers in this regard. On being questioned by the department for income tax Liabilities, Indu Narain contacted. The old employees (the business and premises of India

*Petroleum*s were closed and activities ceased since 2010) and was able to collate some information regarding the pending issues and was able to submit some meagre information only.

4.2 I have considered submissions of the AR. It is noted that there was some kind participation in the assessment proceedings but no details were filed before the AO. Subsequently, there has not been any follow up from the appellant's side. There appears to be some amount of family disturbance due death of the working partner and differences between partners. The AO has made a considerable addition solely because of non-submission of the details. However,

10. After going through the aforesaid finding of the Id. CIT(A) and the reasons mentioned therein for the delay of 6 years in filing the Appeal before the Id. CIT(A). I am of the considered view that that the substantial right of appeal of the Assessee cannot be snatched on the technical grounds. I also find that the reasons for delay are genuine, hence, the delay is condoned. Id. Counsel of the assessee filed a Paper Book containing pages 1 to 52 in which he has attached the copy of the assessment order for the assessment year 2005-06 to 2008-09; copy of Acknowledgement of ITR alongwith computation of income, audit report and annexures, balance sheet, trading and profit and loss account, partner capital account, fixed assets, accounting policies and notes, list of bank accounts, sundry debtors, other liabilities, security deposits for AY 2005-06 and copy of Acknowledgement of ITR alongwith computation of income, audit report and annexures, balance

sheet, trading and profit and loss account, partner capital account, fixed assets, accounting policies and notes, list of bank accounts, sundry creditors, sundry debtors, other liabilities, cash and bank balances for AY 2006-07. He has also certified that the aforesaid documents are the part of the assessment record. I have carefully gone through the documentary evidences filed by the assessee in the shape of Paper Book containing pages 1 to 52 including the assessment order for the AYrs 2005-06 to 2008-09 and I am of the considered view that these documentary evidences required thorough examination at the level of the AO, hence, I am not commenting upon the merit of the case. Therefore, in the interest of justice, I am setting aside the issues in dispute to the file of the AO to decide the same afresh, under the law, after giving adequate opportunity of being heard to the assessee. The Assessee is also directed to cooperate with the AO in the fresh assessment proceedings and not to take any unnecessary adjournment. As a result, the Appeal No. 4734/Del/2015 (AT 2005-06) stands allowed for statistical purposes.

ITA NO. 4735/DEL/2015 (AY 2005-06)

11. Since we have already set aside the issues to the file of the AO for fresh consideration, in the quantum Appeal being ITA No. 4734/Del/2015 (AY 2005-06), vide para no. 10, as aforesaid, therefore, the penalty in question cannot stand in the eyes of law. Hence, the penalty in dispute stands deleted. However, the AO is at liberty to initiate the fresh penalty proceedings, after the completion of the assessment.

12. In the result, the ITA No. 4734/Del/2015 (AY 2005-06) stands allowed for statistical purposes and ITA No. 4735/Del/2015 (AY 2005-06) stands allowed.

Order pronounced in the Open Court on 02/09/2016.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 02/09/2016

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches